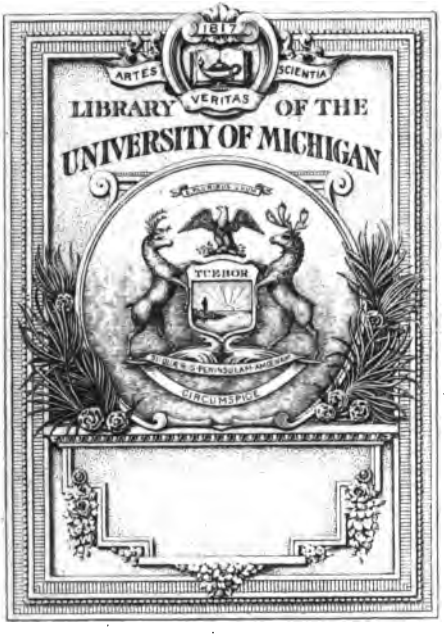
BELGIUM'S CASE

A JURIDICAL ENQUIRY

By
CH. de VISSCHER



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A JURIDICAL ENQUIRY

BY

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PREFACE

In the beginning of August, 1914, when on the verge of the terrible war which put Europe to fire and sword, both Germany and Belgium had to take up a position in regard to problems of a similar type and of supreme importance.

Germany had to decide whether she would respect the neutrality of Belgium which had been guaranteed by her, or whether she would violate it. Her duty was to respect it. On the other hand, her military interest seemed to counsel violation. She did not hesitate, but presented an ultimatum to Belgium—and within two days her troops had invaded Belgian territory.

Belgium, on her part, had to decide whether she would faithfully observe the neutrality to which she was solemnly bound, or whether she would allow German troops to pass through her country. Her duty was to resist. Her political interest was then a

matter of doubt. She did not hesitate. She refused with scorn to allow her territory to be violated by Germany, and within two days her guns replied to the German artillery.

In proportion as facts take on a certain perspective, and events succeed one another, the determining factors in these two decisions become clearly distinguished, and the world can judge more fairly of the position taken up by the two countries.

At the present time Germany's guilt is universally recognised, even by the neutrals who were most favourably inclined to her. It becomes more and more evident that her government has violated law, that it has miscalculated events, and has prepared for its own defeat.

The honourable action of Belgium is universally acclaimed. From day to day it becomes more clear that the path upon which her government entered was not only the path of honour, but one which most surely led to the future security of her country.

Germany had no sooner invaded Belgium

than she tried to diminish in the eyes of the world the gravity of her action, and to justify it from a political and moral point of view. The ground had been most carefully prepared. Diplomats had set to work: they had arranged two lines of argument for their defence. First they intended to call attention to what they considered to be the imminent danger of a French attack through Belgium. Next they would represent the strategical necessity of making a short cut through Belgium to be a matter of life or death to Germany. Alas for their hopes! When the day came for public criticism of the facts, the futility of the two lines of argument became evident. It was then that the academic jurists took up the task and flocked to support the cause. These attempted to destroy the juridical value of the treaties. They searched, too, in Belgian archives, and seized upon some written phrases there to support their assertion that Belgium ought to be finally condemned as the actual guilty party. A deluge of pamphlets appeared, a torrent of subtle arguments was let loose.

With great patience Monsieur de Visscher has collected these multitudinous pleas. He has analysed them with care, and refuted them step by step, with equal learning and logic, with equal calmness and good sense.

His work is captivating to the reader: it is a masterly and learned treatise, inspired by a love of Justice. But a most painful impression is produced on reading in it the long list of German jurists, men of real ability, who have eagerly pressed forward one after the other in the attempt to carry out the ungrateful task of justifying what could not be justified. It is grievous to realise the baleful influence which the dream of a new Holy Roman Empire has exercised on their minds, and to trace in their actual working the errors produced by the blind worship of military force.

But turn your eyes from these confused attempts at special pleading, and try to realise the results in actual fact of the violation of Belgian neutrality, and you will then see that far from benefiting by her crime, Germany has been punished appropriately to her sin.

She believed that she was securing victory for herself by pressing through Belgium; that she would thus avoid hurling herself against the formidable outworks of Verdun, that she would be able to go directly and rapidly to Paris, and as a victor, then turn to face Russia. But these were deceptive hopes. Germany was mistaken in her ideas of the possible action of Belgium and of the political outlook of England. Belgium refused to be an accomplice in an act of treachery: she resisted valiantly: thus a delay of a fortnight was produced. England was stirred to action: she mobilised her fleet, her troops landed on the Continent. And thus the vision of a facile and rapid victory in the West melted away. So by a singular irony of fate, after eighteen months of war, after having moved forces from the Western to the Eastern front, and back again from the Eastern to the Western, Germany in 1916 found herself obliged, if she were to advance, to attack that pass of Verdun which she had wished to avoid in 1914, and to force her way there after having given her adversaries time to organise

their armies, to fortify their strongholds, and to produce heavy artillery and munitions of war in abundance.

This is an object lesson indeed to strategists who imagined that they were able with impunity to trample justice under foot and carry war into a peaceful spot inhabited by a small nation, an honest and laborious people.

It would appear that even at this time there are to be found in neutral countries persons who are inclined to mitigate the responsibility of Germany and to complain that Belgium has acted in an overbearing manner. They are quite ready to admit that Germany was wrong in violating Belgian neutrality, but they hasten to add that Belgium ought to have had the wisdom and modesty not to resist the German Colossus. Why could she not be satisfied with a formal protest or even with a military demonstration? She would have been spared then the atrocities, the destruction, and the hardships of the German occupation.

There are only two types of persons who argue in this manner, those who are un-

enlightened on the subject of the obligation which devolved upon Belgium, and those who think that the evils suffered by that country are out of all proportion to what any nation could reasonably have been expected to undergo. Ignorance of international law, or else ignorance of the real crux of the choice before Belgium, explain the erroneous opinions to which we have alluded.

The position of Belgium in regard to international law has not been a matter of free agreement. In 1831 and in 1839 she found herself placed in a condition of permanent neutrality. The Powers made of her a Barrier-State. Under penalty of breaking her pledged word, Belgium had to resist any invasion, whether this were directed against her, or across her territory against a neighbouring state. A feint of opposition would have been insufficient. The Powers had the right to exact that she should use all the means of resistance in her power: "la résistance que comportaient les moyens dont elle disposait." [1]

[1] See also the Fifth Article of the Hague Convention of 1907 on the duties of neutral Powers in case of war

Most certainly Belgium in 1914 was not mad enough to imagine that her strength was measurable with Germany's. But she knew that a courageous patriotism inspired her soldiers: she knew that the defensive forts constructed in 1887 at Liége and Namur would give them support; she was convinced that, thanks to the means at her disposal, she would be able to hinder seriously the onward march of the invaders. If Belgium were reduced to her own army it seemed probable, and if she had the help of the guaranteeing Powers it seemed certain, that the delay thus caused would be long enough to despoil the invaders of the benefit which they had expected to obtain as a result of the rapidity of their movements, and the surprise caused by a sudden violation of territory.

Belgium then was fully aware of her obligation to act and also of the efficacy of her action. Under these conditions how could she possibly have ordered her soldiers

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on land, and the Twenty-fifth Article of the Hague Convention of 1907 in regard to neutral Powers in case of maritime war.

to stand at ease and to watch passively from the forts of Liége and Namur while the German troops rolled past singing "Die Wacht am Rhein" on their way to attack France?

But did she then foresee the injuries that were to be heaped upon her? When Belgium made her decision she was certainly able to foresee that the German invasion would produce a profound sensation in England; that the latter country, faithful to her traditional policy, would take part in the conflict, and that from that moment the whole of the country from the Eastern frontier to the Western coasts would be exposed to the perils of war. It might possibly even become the main base of German military operations against France and England. But, in addition to these serious possibilities, need she have taken into consideration such atrocities and destruction as the German troops have caused —without any excuse—in Belgium? Certainly not. On the contrary, it would have been reasonable to believe that, thanks to German military discipline, their officers

would keep the huge masses of the rank and file in complete order, and that the conventions of the Hague would be observed.

As to the final issue, whatever were the hopes or the forecasts of probability in the great duel that was taking place, no one in August 1914 would have dared to pronounce with prophetic assurance upon the length of the war, nor upon the conclusion to which it would tend. But what appeared to be certain from the very first moment was that Belgium, if she failed in her duty and let the German troops pass through her territory, would be rushing to her own destruction, whether Germany in the end were victor or vanquished. She would certainly have immediately lost all that credit and claim to consideration which constitute the moral force of a small nation. She would have been branded: centuries, perhaps, would have had to elapse before she could recover from the shame.

And the loss of independence would have been consequent upon the loss of her honour. Suppose that at the end of the

conflict Germany were beaten, what would be the attitude of England, France, and Russia, nations which had recognised the independence of Belgium on condition of a neutrality faithfully adhered to? Would they not reproach Belgium for having betrayed their confidence? Would they not have contrasted with the cowardice of her action the assurance of good faith which her diplomats had reiterated up to the last moment? Would they not have asserted with a certain scorn that material wealth had degraded her? In order to secure themselves in future against any possible recurrence of offensive movements on the part of the Germanic states, would they not have taken measures to restrict the autonomy of Belgium and to guarantee themselves against her lack of good faith? If, on the other hand, Germany were to be victorious in the end, the outlook would be still darker. It is true that the ultimatum offered, as the price of the passage of troops, the maintenance of the independence of Belgium. But was it possible to trust the pledged word of Germany at the moment

when treaties were being torn to pieces? And also what opportunities might be found of imposing conditions upon Belgium, what encroachments and tyranny might not have to be borne by her! Belgium might be summoned to join the Zollverein: Germany might choose to substitute a protectorate, more or less direct, for the permanent neutrality established by ancient treaties and guaranteed by the nations which would have been overcome in the conflict. Under pretext of assisting the financial condition of Belgium, would not Germany have annexed to her own Empire the Congo, which she had coveted for so long?

Such was the threatening perspective which Belgium saw before her in 1914 when the German ultimatum reached her. At that time her fears of the intentions of Germany, should she be victorious, were only suggested in certain minor ways. But how firmly these fears were founded! Every day from that moment has but emphasised them. When the Germans thought that victory was within their grasp, their covetousness, hitherto disguised, began to assert itself.

Did not the large industrial and agricultural associations of Germany declare in the petition addressed to the Chancellor of the Empire on May 20, 1915, that Belgian territory was so closely and economically linked to German industrial territory that it ought to be absorbed? Did not the King of Bavaria proclaim that German economic activity naturally demanded an outlet on the North Sea? Does not the Chancellor of the Empire perpetually refer to an intention of gaining for Germany a real guarantee on Belgian territory, in regard to politics, military exigencies and economics? In short, all German social authorities have conspired to demonstrate to the public that by reason of her geographical position, her maritime advantages, the activity of her people, and the riches of her soil in agricultural and mineral produce, Belgium ought to add her life to that of the Empire, and complete the power of the latter by developing on the same path.

In this way the hidden intentions of Germany have been disclosed. No doubt can any longer be felt. Germany had

prepared an imminent condition of slavery for Belgium if victory had favoured her.

Let us compare in a few words the results of the attitude of Germany and Belgium respectively.

Germany, scorning respect for law and the clauses of treaties, has sowed mistrust of herself among all international contracting parties—those of the past, and those of the future: she has spread a condition of agonised disquiet among all the small states that surround her: she has offered to the other great Powers the pernicious example of an insolent and brutal militarism.

Belgium, though under military occupation, has gained more than a victory: through having affirmed that nations, like individuals, ought to respect law and remain faithful to their engagements; through having at the same time defended her independence with an energy that has risen to heroism; she has strengthened the feeling of duty in the world, she has demonstrated the importance of the part played by small states, she has earned consideration and confidence.

The universal emotion of sympathy and generosity which now is aroused in regard to Belgium, will appear later on in the world's history as the most moving of all protests against the barbarous worship of force.

J. VAN DEN HEUVEL.

Rome, April 18, 1916.

"In order to put an end, if not to injustice itself, at least to the sophistry which excuses it, and to bring the misleading defenders of the mighty of the earth to confess that they are pleading not for Right but for Force, for a force which dictates their very tone of authority (for it would seem as if they themselves felt the necessity to impose this), it will be well to expose the spurious theories by which they deceive themselves and others."

KANT, *Zum ewigen Frieden.*[1]

[1] Kant's *Werke*, ed. Hartenstein, Vol. VI. p. 443.

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INTRODUCTION

AT the moment when Germany was thrusting her armies across Belgian territory, which she had guaranteed should be inviolate, she felt herself too certain of victory to trouble about any lengthy justification of her actions. The Imperial Government, less prudent than Frederick II, who appealed to the jurists at the moment when he gave his troops the word of command to advance, proclaimed in the face of the whole world its scorn of law and of the pledged word.

"Necessity knows no law" appeared in those hours of warlike enthusiasm to be a sufficient excuse for a crime which success would justify. The Reichstag, by receiving them with unanimous applause, had adopted the cynical declarations of the Chancellor. The German people thus considered itself satisfied.

But the opinion of neutral countries, a far more strict one, revolted against this summary explanation of German action. In

this appeal to the right of the stronger, men saw with indignation or with alarm the denial of all international justice. And in proportion as the prospect of immediate victory receded, Germany herself began to pay more attention to this expression of universal disapproval. She had to condescend to new forms of self-justification. Her jurists, faithful to their traditions as officious apologists, took a very large share in this belated task of rehabilitation. Their zeal expressed itself in incessant special pleading. If their efforts have not been crowned with success, it is probably because the principles on which they claim to rest appear to be unusual; so that, to quote the admission of one of these jurists: "it is rather difficult to recognise Law in its new dress." As they could not hope to prove to the world that Germany was in the right, they prepared the way for a general impression of confusion and agitation by a series of impudent assertions and insidious sophisms.

In the following pages an attempt will be made to meet their arguments and to refute them.

BELGIUM'S CASE

CHAPTER I

THE BASIS OF BELGIAN NEUTRALITY AND ITS CHARACTERISTICS—BELGIUM AS A NEUTRAL AND A NEUTRALISED STATE

§ 1. *Neutrality and Neutralisation*

Ordinary neutrality consists in an attitude of impartiality voluntarily adopted by a state in regard to a definite conflict which arises between other states. The sole basis of such neutrality is the exercise of a sovereign right, and for this reason ordinary neutrality is sometimes defined as optional or voluntary neutrality. The common law of neutrality, or the mass of provisions which govern the rights and duties of neutral states affects in no way this power of option considered in itself: it confines itself to

defining the legal consequences which arise from a decision freely taken by a state.

The results brought about by neutralisation are, from this point of view, quite distinct. Founded on an international agreement, and generally inspired by considerations due to the balance of power, the latter aims definitely at sheltering from all danger of armed conflict a state, of which the independent existence and territorial integrity are considered to be to the common interest of several Powers.

This neutralisation implies, at least in principle, a reciprocal renunciation of the right to declare war: it withdraws from the neutralised state, in consideration of the special immunity conferred on her, the right of option which is the basis of voluntary neutrality, while *ipso facto* it makes one of the optional constituents of this voluntary neutrality at once obligatory and legally enforceable. On the other hand, neutralisation modifies in no way the legal relations which the outbreak of a war between third parties imposes on belligerent and neutral nations. "In time of war," as Descamps truly says,

"the common law of neutral states regulates permanent neutrality."[1]

Thus the respective spheres of action of the special conventions of neutralisation and of the common law of neutrality are definitely marked out. On the one hand, the limitation of the right to declare war; on the other, the organisation of relations between belligerents and neutrals. The distinction is a fundamental one: it allows for the fact that *the two types of regulation*, far from being mutually exclusive, as sometimes appears to be assumed,[2] *are in reality connected and complementary in their application to a neutralised state in time of war.*

Belgium was neutralised by the treaties of November 15, 1831, and April 19, 1839; in time of war she shares in the common law of neutrality as defined by the provisions of the fifth Convention of the Hague in 1907. Thus the protection assured to her was a double one. As a neutralised state, she

[1] *La Neutralité de la Belgique*, p. 555; Fr. Hagerup, *La Neutralité permanente*, Revue générale de droit international public, 1905, p. 594.

[2] Krauel, *Neutralität, Neutralisation und Befriedung*, p. 81.

could not, on any possible ground, be regarded as an enemy: as a neutral state she had a right to the general immunity conferred by the common law of neutrality in case of any conflict arising among the other Powers.

§ 2. *The origins and characters of the permanent neutrality of Belgium*

1. *The contractual origins of neutralisation.*—The neutrality of Belgium has its origin in the treaty of November 15, 1831. This treaty, confirming the Act of the preceding 26th June (Treaty of the XVIII Articles), arranges that "Belgium shall form an independent and perpetually neutral state. It shall be bound to observe such neutrality towards all other states." This arrangement was literally repeated in Article 7 of the Treaty of April 19, 1839, between Belgium and the Netherlands. Finally, the first Article of the treaty, signed the same day in London, which on the part of the Powers recognised and guaranteed the neutrality of Belgium, is expressed as follows:—"His Majesty the Emperor of Austria, King of

Hungary and Bohemia, His Majesty the King of the French, Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the King of Prussia, and His Majesty the Emperor of all the Russias, declare that the Articles here unto annexed and forming the tenor of the Treaty concluded this day between His Majesty the King of the Belgians and His Majesty the King of the Netherlands, Grand Duke of Luxembourg, are considered as having the same force and validity as if they were textually inserted in the present Act, and that they are thus placed under the guarantee of their said Majesties." [1]

Neutralisation always has its origin in an international treaty. This absolute rule is derived from the very essence of such an arrangement, and it is confirmed by the regular practice when cases have occurred in history. Neutralisation implies reciprocity of rights and of obligations.

[1] The Second Article of the treaty of April 19, 1839, abrogated the original treaty of November 15, 1831. The latter, however, still keeps its interpretative value.

This reciprocity has its necessary basis in the concurrence of the parties to the transaction, that is, in a contract. Certainly no one state can bind other states by its individual action, nor, by a simple one-sided declaration, restrict their liberty of action in the serious way which is a result of neutralisation. All the examples we have of neutralisation support this fundamental thesis. The neutralisation of Belgium, the neutralisation of the Grand Duchy of Luxembourg (Treaty of London, May 11, 1867), the neutralisation of the Congo by the accession of the Independent State to the clause contained in the tenth article of the General Act of Berlin, February 26, 1885, all these originated in a treaty, in an international agreement.

The basis of the neutrality of Switzerland is an identical one. Yet this point has been recently contested by certain Swiss writers, few indeed in number, and not influential, who have undertaken to reassure their compatriots on the subject of the future state of things which the triumph of German political aims would bring about for per-

manently neutral states.[1] If we were to take their word, Swiss neutrality, being in this respect greatly superior to Belgian neutrality, owed its origin, not to a treaty properly so called, that is, not to a bilateral transaction which produced reciprocal obligations, but to a simple recognition by the Powers of a will to observe neutrality constantly insisted upon by the country in question. Thus the gravity of the violation of Belgian neutrality by Germany would be extenuated by the purely diplomatic origins of that neutrality.[2]

We do not consider that this thesis corresponds with the facts of the case, even less do we believe that it could suitably give to Swiss neutrality a special claim to inviolability.

[1] A. von Salis, *Die Neutralität der Schweiz*, pp. 7–9. Ed. Blocher, *Belgische Neutralität u. schweizerische Neutralität*, p. 16.

[2] Such theories have aroused no echo in Switzerland, where the nation feels itself to be morally united with Belgium. A recent expression of the solidarity of the two countries can be found in the striking speech of Professor Paul Seippel delivered to the National Association of Members of Swiss Universities. *Le Temps*, January 11, 1916.

The declaration made by the Powers at the Congress of Vienna, March 20, 1815, in favour of the perpetual neutrality of Switzerland, stipulated that the signature of the Act containing the acknowledgment and the guarantee of this neutrality should depend upon the accession of the Helvetian Diet to the conditions contained in this declaration. This consent was given on May 27 of the same year in the following terms :—

(1) " The Diet accedes, in the name of the Swiss Confederation, to the Declaration of the Powers assembled at the Congress of Vienna, under date of the 20th March, 1815, and promises that the stipulations contained in the ' Transaction ' inserted in this Act, shall be faithfully and religiously observed."

(2) " The Diet expresses the eternal gratitude of the Swiss nation towards the High Powers, who by the above Declaration . . . promise solemnly to Acknowledge and Guarantee the perpetual Neutrality of the Helvetic Body, as being necessary to the general interest of Europe." In the interchange of these declarations is to be found

the undeniable contractual basis of the definite treaty of November 20, 1815: "Act . . . for the Acknowledgment and Guarantee of the Perpetual Neutrality of Switzerland, and the Inviolability of its Territory."

It is true that this neutralisation, as Paul Schweizer[1] has truly shown, answered the desire of the country and corresponded to the direction of its traditionary political aims, while considerations of general or European interest were preponderant in the marking out of the regulations imposed on Belgium. But who could deny that it is exactly this function of the general interest which gives to permanent neutrality a peculiarly sacred character, any interference with the status of the neutral state compromising, besides its own interests, those of the whole international community? Was such an aim entirely foreign to the act of Swiss neutralisation? Certainly not. The texts which contain the act of Swiss neutrality, more formal on this head than those of any other similar convention, show demonstratively the part

[1] *Geschichte der Schweizerischen Neutralität.*

in the general interest which the Powers intentionally arrogated to this neutrality.[1]

2. *The obligatory character of permanent neutrality.*—Permanent neutrality owes to its origin in agreement the obligatory character which distinguishes it essentially from occasional or voluntary neutrality. A semi-official note published in different organs of the German press[2] has tried to blur this elementary distinction by assimilating to the German violation of Belgian neutrality the action of the Allies in landing troops at Salonika. This imputation was repeated by the Chancellor of the Empire himself in a speech delivered at the Reichstag on December 9, 1915.

As Maximilian Harden has recognised,

[1] "The Powers who signed the Declaration of the 20th of March acknowledge in the most formal manner, by the present Act, that the Neutrality and Inviolability of Switzerland, and her Independence of all foreign influence, enter into the true interests of the policy of the whole of Europe" (Treaty of November 20, 1815). The insertion of this phrase was due to the initiative of the Swiss delegate, Pictet de Rochemont, who rightly attributed to it a supreme importance. (See Schweizer, *op. cit.*)

[2] *Norddeutsche Allgemeine Zeitung* and *Kölnische Zeitung* of October 7, 1915.

there is no analogy between the case of Belgium and that of Greece. The German argument misrepresents the international legal position, which is essentially different in the two cases: and in addition it alters the true appearance of the facts in question. As a neutralised state Belgium could not under any pretext deviate in favour of Germany from her rigorous duty of impartiality, imposed on her by her neutrality by agreement. The neutrality of Greece at the present time is purely an effect of accident or of will: Greece can, as she wishes, either abandon it completely, or divest herself of it as far as she desires in favour of one or other of the belligerents.

Greece was in no way bound down to keep an attitude of neutrality, moreover she had of her own free will concluded an alliance with Serbia: she had undertaken to support the latter in case she might be attacked by a third Power. It is not within our scope here to pronounce on the interpretation that should be given to this treaty. What is decisive from our point of view is that the landing of French and English troops at

Salonika was consequent upon an invitation given by Greece, one which was equivalent to a pledge given to the Allies. From September 21, 1915, M. Venizelos had himself fixed the amount of effectives which he asked from England and France for the protection of Greece and for the execution of her treaty of alliance with Serbia. The diplomatic protest against the landing was a matter of pure formality, dictated by an excessive attention to prudence, and this could not weigh against formal declarations of Greek statesmen, nor against the unequivocal witness of the deeds of the government. M. Skouloudis, the present head of the Cabinet, when he renewed the explicit assurance of his predecessor, M. Zaimis, on the subject of the "friendly" neutrality of Greece, took pains to recall the ties of friendship and gratitude which bound his country to the protecting Powers, Great Britain, France and Russia.[1]

[1] These Powers are the sole signatories of the treaties on which the Kingdom of Greece was founded. Treaty of London, July 6, 1827 (Treaty for the pacification of Greece) and of the Convention of London, May 7, 1832 (Convention for the definitive arrange-

It is well known that Greece owes her liberation and her free constitution to the combined action of these Powers. Besides, the legality of their actual intervention rests on a formal document inserted in the diplomatic conventions by which these three Powers dictated the organisation of the new State. Article 8 of the protocol of the conference at London dated February 3, 1830, drawn up by the plenipotentiaries of Great Britain, France, and Russia, contains the following provision which clearly determines the rights of these Powers collectively to interfere for the protection of Greece: "Aucune troupe appartenant à l'une des trois Puissances contractantes ne pourra entrer sur le territoire du nouvel Etat grec sans l'assentiment des deux autres Cours signataires du Traité" (Treaty of July 6, 1827).[1] Besides, it is well known that the Hellenic authorities,

ment of the affairs of Greece and for the election of a Sovereign of the new Greek state). The same Powers guaranteed by the Convention of London, July 13, 1863, "the independence of the Kingdom and the maintenance of constitutional institutions."

[1] *British and Foreign State Papers*, Vol. XVII, (1829–1830), p. 191.

far from offering the least resistance to the landing of the allied troops, did not cease to give their help in the matter of the installation of the military at Salonika, and of their transport to Serbia. The consent given to the intervention of the Anglo-French troops in Greek territory thus appears as the initial and incontrovertible fact which determined the plan of action of the Allies. It has determined once for all the legality of the act.[1]

The examination of certain allegations uttered by German publicists will lead us to deal eventually with two questions closely connected with the juridical organisation of neutrality by agreement : *i. e.* (1) the rights proper to the neutralised state in the constitution of the *régime* organised by treaties; (2) the right of such a state to make alliances.

§ 3. *The binding force of international agreements which protect the rights of neutrals*

[1] See, on this point, the letter recently communicated by Prince Nicholas of Greece to *Le Temps*, February 20, 1916.

The neutrality of Belgium, as we have seen, was guaranteed by a twofold contractual act: by the particular treaties of 1839 and by the general arrangements of the fifth Hague Convention concerning the rights and duties of neutral powers in case of war on land. It is essential to note in detail the particular nature of these acts, if it is desired to realise their legally binding character and their high authority.

For some time writers have been accustomed to place in a separate category from other treaties those international conventions the purpose of which is to establish a body of rules which constitute a permanent condition of things. Among these "law-making" conventions [1] which have developed in a special manner in the last hundred years, are to be found the various treaties of neutralisation, and the thirteen conventions included in the Final Act of the Second Hague Conference of October 18, 1907. In these conventions there is an element which is quite distinct from the arrangements of a

[1] Oppenheim, *International Law*, Vol. I, §§ 18 and 492.

purely political character dictated by temporary and occasional considerations. They define and organise a condition of law between nations : their object is to promulgate law; on this account they rank among the sources of international law and form an integral part of it.

Thus distinguished from ordinary treaties by their purpose, these conventions differ also from them by their origin. While the treaty of a purely political nature, like the ordinary contract in civil law, constitutes a transaction between parties whose interests are naturally opposed or divergent, international conventions which promulgate law are the result of a collaboration (*Vereinbarung*) of States; one which is founded on the consciousness of common and permanent juridical interests. Their basis and their *raison d'être* concern the permanent welfare of the community of nations.[1]

There is no room for doubt that the violation of these solemn engagements affects

[1] See, in particular, K. Strupp, *Gegenwartsfragen des Völkerrechts*, Niemeyers Zeitschrift für Internationales Recht, 1915, p. 854.

in the highest degree the security of legal relations between states : it shakes the very foundation of international organisation. And therefore it is not without reason that the defenders of the disregarded rights of Belgium have appealed to the contractual guarantees of its neutrality with an insistence on this point which has sometimes appeared to be too exclusive.[1] In the case in point the violation of the treaties implies more than the rupture of a contract : it constitutes a disregard of an objective rule of international law.

These considerations are the answer to certain objections raised by German jurists against the obligatory character of the treaties to protect Belgian neutrality; such objections referring either to a defect in ratifying some of the arrangements (Chap. III, Sect. I, § 1), or to a supposition that the treaties of neutralisation were obsolete (Chap. III, Sect. 1, § 2).

[1] See, under this head, the work, in every respect so sympathetic to Belgium, of James M. Beck, *The Evidence in the Case* (New York, 1915), pp. 219–221.

CHAPTER II

THE PRIMITIVE ARGUMENT—THE VIOLATION OF BELGIAN NEUTRALITY AND THE PLEA OF NECESSITY (NOTWEHR—NOTSTAND)

"So spake the Fiend, and with necessity,
The tyrant's plea, excused his devilish deeds."
MILTON, *Paradise Lost*, Book IV. l. 393.

THE brutal, and at the same time explicit, declarations made by German statesmen at the moment when the violation of Belgian neutrality took place, have fixed upon Germany in an irrevocable way the moral responsibility of the aggression of which Belgium has been the victim. However summary may be the system of defence used in these declarations, this remains the sole official contemporary attempt at a justification of the facts. "Our troops," said the Chancellor in the historic séance of the Reichstag, August 4, 1914, "have occupied Luxembourg and perhaps are al-

ready on Belgian soil. Gentlemen, that is contrary to the dictates of international law. . . . Necessity knows no law. We were compelled to override the just protest of the Luxembourg and Belgian Governments. This wrong—I speak frankly—we will endeavour to make good as soon as our military goal has been reached. Anybody who is threatened as we are, and is fighting for his highest good, can only have one thought—how he is to hack his way through."

In the words of the Chancellor and of his collaborators, the argument, we may well recognise, had no pretence to be any sort of juridical justification. Many German writers have noticed the incoherence of that passage in Herr von Bethmann-Hollweg's speech which refers to the violation of Belgian neutrality, a passage in which every single phrase is the exact antithesis of the preceding one.[1] We willingly leave this subject in their hands: their treatment of it is entirely convincing. Apparently "the Chancellor was expressing himself as a politician, not as a jurist, nor as a

[1] See, *e. g.*, E. Müller, *op. cit.*, pp. 24 *et seq.*

professor of international law" (E. Müller, p. 25).

German jurists have undertaken to refer to the action of their government the justification of a theory dear to their minds, the theory of necessity. In their apologies it holds an important place. We know that German opinion has attempted to distinguish clearly the right of self-defence (*Notwehr*) from that which a state of necessity may induce (*Notrecht*). The difference between the two conditions may be thus summarised. The exercise of the privilege of self-defence is characterised by the struggle of right against unjust aggression; while "a state of necessity" is characterised by a conflict of rights and duties.[1] In a condition of self-defence the injustice of the aggression furnishes the victims with a justification that is at once decisive and complete. Quite different and much more questionable is the condition which results from a resort to

[1] K. Binding, *Handbuch des Strafrechts* (1885), p. 760; Fr. von Liszt, *Lehrbuch des deutschen Strafrechts*, 9th edition, p. 148; Wachenfeld, *Encyklopädie der Rechtswissenschaft*, Vol. II, p. 261; Heilborn, *ibid.*, p. 1049.

the theory of necessity. Here the following problem arises: — If the safe-guarding of interests cannot be assured except at the expense of the violation of the interests of a third innocent person (*eines unschuldigen Dritten*), can this violation be justified by the necessity implied in the case? The majority of writers who represent the German school answer in the affirmative, and it is from this point of view that many of them have attempted to justify the invasion of Belgian territory beyond and independently of the supposed violation by Belgium herself of her own neutrality.

Here, however, another question arises, the examination of which may save us from an ambiguity of which the defenders of *Notrecht* have made great use. Of what nature was the necessity, so loudly invoked by the German Government? We will look for the answer to this question only among the declarations of the German statesmen themselves, as we have found them set out in the following documents.

(1) The " very confidential " note, handed on August 2, 1914, by the German Minister

at Brussels to M. Davignon, Minister of Foreign Affairs (*First Belgian Grey Book*, No. 20). (2) The telegram addressed on August 4 by Herr von Jagow to Prince Lichnowsky, German Ambassador at London (*Blue Book*, No. 157); (3) the letter addressed on August 4 by the German Minister at Brussels to M. Davignon (*First Belgian Grey Book*, No. 27); (4) the despatch of Sir Edward Goschen, British Ambassador at Berlin to Sir Edward Grey, July 31 (*Blue Book*, No. 122); (5) the report of Sir Edward Goschen to Sir Edward Grey, August 8 (*Blue Book*, No. 160); (6) the report of Baron Beyens, Belgian Minister at Berlin, to M. Davignon (*Second Belgian Grey Book*, No. 52).

The simple perusal of these documents immediately suggests to us a fact of capital importance. The necessity appealed to in order to justify the violation of Belgian neutrality is there presented in two very different forms. The invasion of Belgian territory appears in the documents numbered 1, 2 and 3 above as a measure of security for Germany, rendered imperatively necessary by the imminent entry of French troops

into Belgium.[1] In the succeeding numbers, 4, 5, 6, the justification is to be found beyond any violation of Belgian territory undertaken or projected by France, in the simple strategical exigencies of the German plan of campaign.[2]

Finally, the two explanations are sometimes combined, as in the speech of the

[1] Note of August 2.—"The German Government has received reliable information, by which it learns of the intention of the French to march on the line of the Meuse by Givet and Namur. This information leaves no doubt that the intention of France is to attack Germany through Belgian territory. . . . Germany therefore feels it an imperative duty of self-preservation to prevent this enemy attack."

[2] *Blue Book*, No. 160.—"Herr von Jagow again went into the reasons why the Imperial Government had been obliged to take this step, namely that they had to advance into France by the quickest and easiest way, so as to be able to get well ahead with their operations and endeavour to strike some decisive blow as early as possible. It was a matter of life and death for them, as if they had gone by the more southern route they could not have hoped, in view of the paucity of roads and the strength of the fortresses, to have got through without formidable opposition entailing great loss of time. This loss of time would have meant time gained by the Russians for bringing up their troops to the German frontier. Rapidity of action was the great German asset, while that of Russia was an inexhaustible supply of troops."

Chancellor at the Reichstag (Séance of August 4) and in the interview of Herr von Jagow and of Baron Beyens on August 4 (*Second Belgian Grey Book*, No. 51).

These attempts at justification, we need hardly say, spring from two completely different sets of ideas. While one of them might have offered, as we shall see, a fully satisfactory juridical basis for the action of the German Government, the other only rested on considerations of interest and opportunism. The first argument, if we are to suppose it to have been founded on fact, would cut short the whole discussion—any reference to the second would then have been not only useless but dangerous. Let us note, by the way, that this dual system of defence has made the task of the German apologists a singularly difficult one. It is certainly a significant fact that in an interview the result of which would be supremely important to Germany, von Jagow as Secretary of State only appealed to the consideration of strategical interests when he wished to justify the action of his Government in the eyes of the British Ambassador

—a consideration to which without question his interlocutor would be the least accessible : that, in fact, he confined himself to this argument of plainly inferior value, without making any allusion to the complete justification with which the proof of a violation projected by France of Belgian territory would have provided him. Here, then, the specious pretext is effaced and the brutality of the actual determining arguments appear in the light of day.

But we must now examine the problem at its source, and consider the excuse of necessity from the dual point of view of its foundation in fact and its juridical value. We shall consider it as exhibited successively in the two different forms which it has assumed in the declarations of German statesmen.

§ 1. *The accusations against France and the argument of self-defence* (*Notwehr*)

It was the threat of a French invasion which, as we have seen, was quoted in the ultimatum of August 2 as an argument for the entry of German troops into Belgium.

The Imperial Government certainly avoided alleging that a violation of Belgian territory had already been accomplished; such a statement would have been immediately met with a peremptory denial addressed to its representative in Brussels. It confined itself to expressing fears, to formulating apprehensions, moreover without providing any proofs of its assertions.[1] We shall note, and the comparison is suggestive, that Germany attempted to justify in identical terms the invasion of the Grand Duchy of Luxembourg after the event; there again the occupation was described "as only intended to ensure against a possible attack of a French army."[2]

[1] The point of view of the German Government is clearly indicated in these words of the Chancellor: "We know that France stood ready for the invasion, *France could wait, but we could not wait.*" No use was made officially of the invention of the entry of French troops into Belgium before August 5: this story was circulated in the proclamations of German generals and expanded at great length by R. Grasshoff (*op. cit.*, pp. 14 *et seq.*). See on this subject the documents published in the *Second Belgian Grey Book*, Nos. 116 to 119.

[2] Telegram of M. Eyschen to Sir Edward Grey, *Blue Book*, No. 129.

Let us from the very first dispose of a misconception. Many German writers[1] have professed to find in the works of English jurists (Lawrence, *Principles of International Law*, 1911, pp. 609–610), and even in the manual of the Laws of War on land edited by the British Government (Edmonds and Oppenheim, *Land Warfare*, art. 468), an explicit confirmation of their theory of self-defence as applied to the violation of neutral territory. The point must be made clear. The condition expressly referred to in the passages quoted is that of a belligerent state which is in the position to show an invasion by hostile forces of a neutral state incapable of defending its neutrality to be at least imminent.[2] No one could refuse to such a state the right of providing by all active means against the threatened danger. But we must notice that there is no question here, as German writers would have us

[1] Von Liszt, *Vossische Zeitung*, 1914, No. 407; Strupp, *Internationale Lankriegsrecht*, p. 188 note; W. Schoenborn, *loc. cit.*, p. 580; Müller, *op. cit.*, p. 87.

[2] As a fact, the passage quoted of the English manual only refers to a violation of neutral territory as already accomplished.

believe, of an application, pure and simple, of the theory of *Notrecht*. One may admit that the certainty of aggression, and the impossibility of averting it by any other means, are in such cases the determining factors; they give occasion to the superior right of self-defence to assert itself. Only the incontestable existence of that right could, in the degree claimed by its exercise, make legal the infraction of the law of neutrality.[1]

Thus the real object of the discussion becomes clear. The question reduces itself to this: Was Germany justified by any demonstrative proof of a French invasion of Belgium in supporting the entry of her troops into Belgian territory as an appeal to self-defence (*Notwehr*)?[2]

We need not here repeat all the details

[1] We may say that in such a case the exercise of the right of self-defence (*Notwehr*) places the threatened Power in a state of necessity (*Notstand*) in regard to the neutral country. This is the hypothesis of the combination of *Notwehr* and *Notrecht* assumed by certain German jurists.

[2] On this subject see chiefly J. Kohler, *Notwehr und Neutralität*, Zeitschrift für Völkerrecht, Vol. VIII, (1914), p. 576.

in a presentation of the facts which has been made elsewhere. Our object is to confine ourselves to some essential points, which can be deduced from the attitude of the German Government itself and which it is necessary to state in regard to the common law of self-defence.

A state of self-defence is constituted by the appearance of an aggression which is *certain, instant,* and *leaves no choice of means* other than force. It rests with him who appeals to the law of self-defence to establish his right. It is agreed that these principles equally control international relations. The Government of the United States, in a well-known case,[1] has applied these principles which we are discussing in a manner that is adequate and has obtained universal approval: *i. e.* on the question of the violation of neutral territory as justified by self-defence.

The German Government has never offered the slightest proof of the danger of a French invasion of Belgium. It is well known that

[1] *The Caroline.* B. Moore, *Digest of International Law,* Vol. II, § 217.

England, desirous of leaving to neither possible belligerent any excuse based on the presumed intentions of his adversary for intervening in Belgium, invited both parties, by approaching them simultaneously at Paris and Berlin on July 31, 1914, to promise to respect Belgian neutrality. France, repeating an assurance which she had already spontaneously given through her Minister at Brussels, stated on the same day that she adhered to the English proposition. We know what attitude was taken up by the German Government: it declared that it could not bind itself in any way. Why this refusal? Herr von Jagow gave the British Ambassador the mysterious answer that any reply could not but disclose a certain amount of the plan of campaign in the event of war ensuing.[1] On the next day, August 1, the answer of France was brought to the know-

[1] *Blue Book*, No. 122. So far back as 1911, in the course of the polemic raised by the introduction of the Dutch plan concerning the fortifications of Flushing, Herr von Bethmann-Hollweg refused for similar reasons to make a public statement in favour of the respect for Belgian neutrality (*First Belgian Grey Book*, No. 12).

ledge of the German Government. On August 2 the confidential note excused the entry of the German troops into Belgium on the ground of a threat of French invasion.[1]

The facts speak for themselves. France, taking the initiative, formally refrains from any action in Belgium; Germany, possessing this assurance, nevertheless withdraws into a dubious reserve which she excuses on the ground of her plan of campaign. This respective attitude of the two parties defined their rôle of aggression and defence. If the supporters of Germany desired to put an end to this assumption they should at least have been able to explain *why Germany*, if she had no other motive for invading Belgium than that of parrying a French offensive, *would not accept, without compromising a purely defensive objective, the engagement that France herself could accept without endangering the success of the plan of invasion she was supposed to be contemplating?*

But need we insist further? The plea

[1] Diplomatic correspondence: *First Belgian Grey Book*, Nos. 9, 14, 15, 19, 20: *Blue Book*, Nos. 114, 122, 123, 125.

uttered by the Chancellor at the Reichstag on December 2, 1914, proves how impossible it was for the German Government, four months after the ultimatum it had delivered to Belgium, to formulate a specific accusation against France. The Imperial Government, said the Chancellor, had information about the French plan of campaign. No suggestion of a proof was ever brought forward to support this assertion.

And also there is no more striking proof of the aggressive intentions of Germany in regard to Belgium, and of the completely honourable attitude of France, than that which we can deduce, on the one hand, from a comparison of the respective military dispositions of these two Powers at the opening of hostilities, on the other, from the actual march of events. Germany, on the Eastern French front was absolutely free to choose between offensive and defensive tactics, but on the Belgian frontier she was bound to keep entirely on the defensive; since her intervention in Belgium could only be justified if an exceptional case arose, and with the object of

guaranteeing the treaties of 1839. But the plan of operations of the German General Staff was entirely founded on the idea of a vast offensive directed across Belgian territory. The relative weakness of the purely defensive organisation along this part of the German frontier, the establishment of centres of concentration, and the laying down of numerous lines of strategical railways, all this shows with absolute certainty that the German military authorities had deliberately substituted the plan of a sudden offensive across Belgium for the position of watchful expectation justified by the treaties. On the other hand, it is known that in the beginning of August 1914 the whole mass of the French forces were turned towards Germany, on the line between Belfort and the Belgian frontier. A *communiqué* of the French Government [1] discloses the sudden modifications which had to be made in the first plan by reason of Germany's violation of Belgian neutrality. Conversely the absolute certainty and perfect

[1] April 1915, *Second Belgian Grey Book*, No. 119, Annexe. Cf. A. Weiss, *La violation de la neutralité belge et luxembourgeoise*, pp. 23–25.

regularity of the movements of the invading army show indisputably the effects of the long preparation of the plan of a German offensive across Belgium.

One reservation only, a most natural one, had been made by the French Government in the matter of the assurance they gave in regard to Belgium: the hypothesis of a violation of Belgian neutrality by another Power might have obliged France, in order to secure her own defence, to modify her attitude. It is hardly credible, but it is a fact that this reservation has aroused the criticism of some German writers. Professor Schoenborn, for example, considers it prejudicial to Belgian neutrality, and apt to give France a convenient pretext for interfering in Belgium. Such quibbles do not deserve refutation.[1] Let us only recall (1) that the violation of Belgian neutrality by Germany would have placed France in a position of self-defence (see above); (2) in relation to Belgium, the highest German authorities admit in such cases the intervention of the guaranteeing Powers inde-

[1] *Op. cit.*, pp. 577–578.

pendently of the assent of the neutralised State.[1] As a matter of fact it is known that in respect for the scruples of the Belgian Government, France and England delayed their intervention until Belgium herself appealed to them after the first events of the war (*First Belgian Grey Book*, No. 40). (3) As to Germany, we shall see later that the reservation which is apparent in the French answer was formulated in terms identical with those used by Bismarck in his letter of July 22, 1870, to M. Nothomb, Belgian Minister at Berlin (see *infra*, p. 86).

Self-defence only authorises the use of force when no other possible means can be employed. Here, above all, Germany is left without a shred of justification. It is well to remember, in fact, that in the matter of Belgium, the problem raised by a threat

[1] Heilborn, *Encyklopädie der Rechtswissenschaft*, Vol. II, p. 1045. It is entirely incorrect to say, as Schoenborn does (p. 578, note 13), that Descamps condemns the clause in question. The object of Descamps' remark is to bring out the fact that the violation of neutrality, far from liberating the guaranteeing Powers from their obligations, has no other result than to legalise their intervention by the operation of the guarantee.

of invasion on the part of one or other of the belligerents was stated in special and perfectly definite terms. The case of self-defence as brought forward by the German Government, implying as it did at least an imminent violation of Belgian neutrality, should inevitably have resulted in the procedure founded upon the guarantee which was instituted by the treaty of 1839. As guaranteeing the neutrality of Belgium, Germany was under a strict obligation to communicate to the Belgian Government the distinct information she said she possessed in relation to the aggressive intentions of France, and having given the proof of this assertion, to propose to Belgium a concerted and general plan for repelling the invader. This proof was, however, not offered by the German Government; this collaboration was never proposed by them: thus its attitude offers a striking refutation of Germany's attempt at self-justification.[1]

[1] The attitude of Germany is inexplicable, whatever part is assigned to Belgium in the defence of her neutrality. If Belgium were loyal, she ought to expect frank and confiding help to be extended to her in the face of a common danger; if she were the accom-

To affirm, as do Strupp [1] and Müller,[2] that the French menace left Germany no alternative but to violate the treaties of 1839, is purposely to ignore the working of the guaranteeing clause. The very terms of these treaties pointed out the regular course which would have allowed to Germany a conciliation of the interests of self-defence and of respect for the pledged word.

§ 2. *The exigencies of strategical interest and the right of necessity* (*Notrecht*)

The provisions of the law of self-defence, by reason of their very complete and definite character, do not offer a suitable ground for the efforts at rehabilitation made by German jurists. The hypothesis of French

plice of England and France, she would have given Germany the right, which the latter would not have failed to use, to treat her as an enemy. It would be vain to oppose to this the suggestion that Germany had an interest in considering Belgium at the beginning of the war. This explanation, as we shall see, is refuted by the attitude of German statesmen. See *infra*, pp. 115–116.

[1] *Das Internationale Landkriegsrecht*, p. 133.

[2] *Op cit.*, p. 88.

aggression across Belgium proved to be not in accordance with facts; and when these jurists try to justify the violation of Belgian neutrality, their appeal is in general to necessity of quite a different kind. This necessity, then, is the *Kriegsräson*, that which is founded, according to Strupp, "on the supreme duty which is laid on the military command to assure *the fortunate issue of the war, the defeat of the enemy.*"[1] The measures authorised by this necessity have nothing in common with those imposed by self-defence; they are simply *the conditions of success.* Thus the plea is developed in quite a different way: the theory of a state of necessity (*Notstand*) isolated from that of *Notwehr* is now to receive a suitable application; *Notrecht* will give to the action of the German Government the support of a legal theory which, even if not an acceptable one, has at least this time some relation to its true motives.

The argument of military or strategical interest was put forward, as we have seen (*supra*, p. 28, note 2), in a perfectly clear

[1] *Das internationale Landkriegsrecht*, p. 5.

manner by Herr von Jagow in his historic interview with the British Ambassador. "The German armies were to press into France by the most rapid and easy way: to take the initiative, to strike as soon as possible a decisive blow. As rapidity of action was the great opportunity of Germany, the passage across Belgium became an overwhelming necessity to her." [1]

When used in application to this new argument, the theory of the German jurists depends chiefly on supposed analogies deduced from certain solutions provided by criminal law and by civil law. Of what character are these solutions? And what is the value of the analogies which are laboriously derived from them?

Even in the domain of criminal law the admission of a defence of necessity, characterised, as we have seen, by a conflict of rights and duties, is most disputable.[2] It has been expressly denied in England

[1] The passage is quoted by German jurists as characteristic of *Notstand*, or a state of necessity.

[2] There is much uncertainty here among German writers. See, *e. g.*, Wachenfeld, *Encykl. der Rechtswissenschaft*, Vol. II, p. 261.

by the decisions of the Court of Queen's Bench, which refused to admit the benefit of the theory in an extreme case in which the defence could, however, put forward the primitive instinct of the preservation of human life.[1] But what we must especially note is this: even when the excuse of necessity can be received, its admission in this particular domain is chiefly justified by two considerations which are peculiar to criminal law. On the one hand an extreme necessity may present itself sometimes as a form of moral constraint which does away with liberty of choice, a necessary element in criminal responsibility. It is in this subjective form that necessity is recognised as a cause of exemption from responsibility in French law (*Code pénal*, art. 64), and in Italian law (*Codice penale*, Tit. IV, "Della imputabilità," art. 49, 3°), and by certain decisions in the American courts. On the other hand, there are exceptional cases when the danger warded off by the crime completely outweighs the severity of

[1] The case of the *Mignonette* ("Reg. *v.* Dudley and Stephens," *Law Reports*, 14, Q.B.D., 273).

the penalty inflicted by the law; on this account the latter loses its deterrent effect on the will of the offender, and it is easily understood that in such a case it cannot be applied.[1]

But it is surely quite evident that these considerations, which both answer to the particular exigencies of criminal law, are entirely foreign to the domain of international law. No analogy can justify a comparison which is not pertinent to the argument.

It is true that contemporary German jurists, expanding a conception contained in germ in § 54 of the penal code of the Empire, and confirmed in what are, moreover, narrow limits by §§ 228 and 904 of the civil code, have tried to base the theory of *Notstand* on a new and purely objective argument. In this conception, which up to a certain point may claim to be derived from the Hegelian philosophy, the choice, brought about by the alternative condition of necessity,

[1] This was the point of view formerly supported in Germany by Kant and by Feuerbach. See also Binding, *Die Normen und ihre Übertretung*, Vol. II, p. 88.

becomes imperative through a comparison of the respective values of the interests which are at variance. From this point of view § 904 of the civil code in particular provides, it would seem, an analogy in favour of the action of the German Government, and to this analogy many jurists have appealed.[1] This paragraph refuses to an owner, reserving compensation in case of damages, the right to oppose a third person's interference with his property when this is necessitated by the threat of a wrong incomparably superior to that which this interference would involve. A preponderance of general social advantage would be a reason for appealing to the *Notstand*, or state of necessity, and for claiming a special right, the *Notrecht*, which authorises a sacrifice of the lesser interest to the conflicting greater social advantage.[2]

We may leave aside the more obvious

[1] Zitelmann, *Haben wir noch ein Völkerrecht?* p. 23; Rosenberg, *op. cit.*, pp. 39–40.

[2] The predominance of this theory in Germany is of fairly recent date. Geyer did not admit the existence of *Notrecht* (*ein Notrecht gibt es nicht*). Holtzendorff's *Encyklopädie der Rechtswissenchaft*, V° Notstand.

criticism which occurs to the mind when contemplating the entire want of harmony in German opinion on the subject of the juridical character of the act justified by necessity (*Notstandverletzung*), and we will confine ourselves to the discussion of the principle which is at the base of the theory. The latter implies, at the very least, one essential condition : the evidence of a public common interest, which justifies the sacrifice of certain individual interests and marks the scale of importance in the hierarchy of values. Thus, when conflicting interests are in a relation of complete equality of values (as, for example, in the hypothesis of the conflict of human lives), it will be in vain to seek a juridical foundation for the act by which one of them assures its own preservation at the expense of the other. The German jurists on this point have had no hesitation in advancing upon the Hegelian view.

In his pamphlet : *Not kennt kein Gebot*, Professor Kohler declares that in the case of a conflict which cannot be solved (*aut ego aut tu*) each has an absolute right to

safeguard the interests of his own person by sacrificing to it those of others (pp. 22, 23). But is it, after all, a question of right which is here discussed? Yes, Kohler asserts, there is a right of necessity, the basis of a special law which takes the place of ordinary rules, one which only obeys a *Realdialektik* of this world and is reactionary to sentimentality (pp. 17, 23, 26). And this law, which German science alone has been able to evolve, has its function defined as follows: "there where the ordinary rules of juridical organisation suggest no way of resolving the problem: *Law must bow before Fact* and side with the conqueror: factum valet" (p. 23).

When the Berlin Professor who wished to explain to the whole world the real aim of the Chancellor's speeches thus showed us Right prostrate before the triumph of Might, he emphasised in a remarkable manner the deep-rooted brutality of the Chancellor's assertion. He does not hesitate to use even the most violent expressions in giving vent to his "avenging irony" in reference to "those Americans who have never under-

stood anything of the philosophy of law, ignorant men and babblers of all sorts who have dared to attack Germany." In this way he has discredited the cause which he attempted to defend.[1]

Is there, however, any place for *Notrecht* in international law, apart from the special cases in which it is implied in, and coextensive with, the exercise of self-defence?

On a priori grounds this can clearly be denied. The conditions which are essential to its application are here entirely absent. Where is to be found the general interest, the standard of rights and duties, which controls conflicting interests, imposes the necessary sacrifices and operates in so striking a manner in criminal law by establishing a graduated scale of crimes and punishments? When lifted into the regions

[1] As to the Belgian statesmen who have not recognised the right of Germany, "their conduct has only one excuse. They knew too little our great, noble, unique Germany." See, to judge of the unfortunate impression produced in neutral countries by such writings, the interesting bibliographical notes of J. I. de Haan in the review *de Beweging* (Amsterdam), especially the numbers of February, April and September 1915.

of international law, the theory of *Notrecht* strikes across the fundamental principle of the absolute independence and the irreducible equality of sovereign states.[1]

And, to refer once more to the excuse for the violation of Belgian neutrality, we cannot allow it to be said, as *e.g.*, by Kohler, that Germany did not threaten the essential interests of Belgium, that the ultimatum, drawn up in conformity with the exigencies of *Notrecht*, offered to indemnify Belgium for all the damage caused by the German troops, and that when the reckoning should be made, of the two alternatives mentioned, the strategical interest of the Empire appeared to be more important than the interest which Belgium might consider implied in the inviolability of her territory and in the respect for her neutrality.

Belgium, as every one knows, was not free to submit to the German ultimatum. Bound by the treaties of neutralisation, she could not acquiesce in a demand which

[1] Westlake has noted this on the subject of certain claims made by the German representatives at the Second Hague Conference, 1907. *International Law*, Vol. II, p. 326.

exacted from her not only the sacrifice of her own interests but the betrayal of her duties. This is a plain saying, but it suffices to destroy the whole system of defence founded on *Notrecht*.

Apart from these considerations of honour and of duty, which doubtless did not weigh with German statesmen,[1] what assurance could Belgium have that her territory, if opened by her to one of the belligerents, in despite of her international obligations, should not become the theatre of the vast conflict which was about to break out? As the accomplice in the matter of a flagrant violation of treaties she would have given herself irrevocably into the hands of Germany, who, were she the victor, could not recompense Belgium for the loss of her prestige and of her autonomy, and were she the vanquished nation, would be powerless to protect her against the just resentment of the conquerors.

[1] Professor Kohler sees nothing here but an absurdity. The example of the Grand Duchy of Luxembourg which he quotes is completely irrelevant. No one is ignorant of the fact that the neutrality of Luxembourg is an unarmed neutrality.

But there is more to come. In the realm of criminal and civil law the application of the theory of *Notrecht* is made under the authority and control of the courts to which has been confided the task, assuredly a very delicate one, of weighing the interests at variance : it is only their intervention which can possibly secure an equitable regulation of them. It is their task not only to weigh the respective values of contending claims, but also to exact the proof that the necessity of which the agent claims the advantage is not one attributable to his fault.[1] This essential guarantee provided by the presence of a regulating authority is entirely wanting in the actual organisation of international relations : the claims of a state to sacrifice the rights of a neighbouring state in order to safeguard its own interests can only be determined by the relation of forces (*Macht-*

[1] This is an absolute condition of *Notrecht* and one which the very explicit text of the German penal code formally affirms (§ 54, " in einem unverschuldeten Notstande "), and this is the same with the Italian penal code (Arts. 49, 8°). Heffter (*Das Europäische Völkerrecht*, § 80) declares it to be applicable to the relations between states.

verhältniss) which puts the weaker at the mercy of the stronger. The theory of *Notrecht* then appears here to be the negation of law; it leads to anarchy, or rather it is anarchy in person.[1] No one has formulated the condemnation of the theory in more severe terms than the great German jurist, Franz von Holtzendorff, in his classic work, *Handbuch des Völkerrechts*.[2] Here the conception of *Notrecht* is denounced by him as impracticable in fact and subversive of all notions of order and of justice in international relations. No less formal, and of high significance is the recent declaration of the American Institute of International Law, relating to the rights of neutrals (Session of Washington, January 6, 1916). While careful to affirm in their integrity the principles of law so openly despised by German opinion,

[1] In order to conceive this it is sufficient to refer to the completely contradictory opinions expressed by German writers in the matter of the right of Belgium to resist the German invasion. Some allow to her the right of self-defence or *Notwehr* (Peters), others concede to her at least the right of necessity or *Notrecht* (Niemeyer), while others, like Kohler, absolutely deny to her any right to resist at all!

[2] Vol. II. pp. 52–58.

the eminent jurisconsults, members of this association, have placed in the forefront of their deliberations the following resolution—

"Every nation has the right to exist, and to protect and to conserve its existence, but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states."[1]

As applied to the laws of war, the excuse of necessity leads to the absolute supremacy of strategical or military interest, as formulated in the maxim—"*omnia licere quæ necessaria ad finem belli*"; it is the *Kriegsräson*, that is a *raison d'Etat* transposed into

[1] We must compare with this resolution the declarations made by the Holy See. "It is permitted to no one, for whatever motive, to disregard justice" (*Consistorial Address*, January 22, 1915).

"Even if the German point of view were admitted, it would still remain true to say that Germany, by the admission of her Chancellor, penetrated Belgian territory with full knowledge that she was violating neutrality, and consequently that she was committing an injustice. This is sufficient to bring that action directly within the terms of the subject dealt with in the Pontifical address" (*Letter of Cardinal Gasparri to the Belgian Minister*, July 6, 1915).

the military domain.[1] The chief characteristic of the German conception is the claim, many times advanced in the course of the deliberations of the Hague Conferences and brutally set forth in the writings of German military experts, to superimpose on the legitimate and recognised exigencies of war a notion of an absolute and unconditioned character — "transcendental" (Zitelman, *loc. cit.*, p. 651)—which controls the very laws of war and gives authority to abandon their most formal provisions. Let us face the fact: this contention is a defiance of all juridical argument. It takes its stand in an order of ideas foreign to law, and thus escapes its criticism.

And yet one principle, universally recognised up to the eve of the present war, provided a last defence, in appearance an impenetrable one, to the anarchic action of

[1] Among writers who are in favour of this theory see especially C. Meurer, *Die Haager Friedenskonferenz*, Vol. II. The general application of *Kriegsräson* to the laws of war was formally condemned by the two Hague Conferences :—Art. 22 of the *Règlement concernant les Lois et Coutumes de la guerre sur terre:* "The right of belligerents to adopt means of injuring the enemy is not unlimited."

Notrecht. It is a logically sound rule that when a convention aims at setting limits to the respective rights of parties in view of a certain condition of things, these parties shall not in any case be authorised to escape from observing the convention by appealing to exigencies which the convention was expressly intended to exclude. It is exactly the same idea that is expressed by the principle of international law, viz. that war does not affect treaties which are concluded with the express object of regulating the conduct of the parties during war.[1] In the first rank of these treaties are found the conventions of neutralisation and the provisions of the Fifth Hague Convention which protect the rights of neutrals.[2] Their common object and their *raison d'être* forbid belligerents access to neutral territory whatever interest they may have in claiming this on account of their military operations. If then any one were to put forward the claim of strategical interest in

[1] See, for this interpretation, the resolutions of the Institute of International Law, Session at Christiania, *Annuaire* of 1912, p. 648.

[2] von Liszt, *Das Völkerrecht* (1910), p. 169.

order to excuse the violation of Belgian neutrality, he would be making an attempt to justify the action by the very reasons which these treaties are intended precisely to abjure. An agreement had been so clearly arrived at on this point that the German General Staff itself here gave up its favourite theory and explicitly condemned the violation of neutral territory "*even if the necessity of war should make such an attack desirable*" ("auch wenn das Bedürfnis des Krieges einen solchen Eingriff verlangen sollte").[1]

It was left to the actual representatives of German thought to throw over truths which rested on the elementary good sense of the world. "Germany," said Professor Kohler, "might appeal to the right of necessity: this right authorised her to invade Belgium; in regard to this necessity former treaties had no longer any weight" (*op. cit.*, p. 35).[2]

[1] *Kriegsbrauch im Landkriege*, 1902, p. 74.

[2] So also Zitelmann and W. Schoenborn, *Deutschland und der Weltkrieg*, pp. 651 and 579; von Campe (*Deutsche Juristen-Zeitung*, March 1915): "Good faith and mutual confidence are the highest sanction of civil law: it is otherwise in international law (nicht so im Völkerrecht)."

But there is worse to come, for the logic of this theory is capable of a new development. To any one who sees in *Kriegsräson* the supreme arbiter of the conduct of belligerents, it cannot be a matter of doubt that treaties thus concluded in view of war being those which naturally place obstacles in the way of its exigencies, are also those which war most frequently nullifies; hence it follows, according to Professor Niemeyer, that such treaties, far from enjoying a special authority, are essentially precarious and fragile, "*as they are immediately threatened by that ruling mistress of war, Kriegsräson.*" [1] And this means that a law is the less to be

[1] "International Law in War," *Michigan Law Review*, Vol. XIII, p. 178. Cf. *Juristische Wochenschrift*, 1914, No. 16. It is only fair to mention here the names of some jurists who have been able to resist this general aberration. Professor Lammasch, of the University of Vienna, has loudly protested against the violation of treaties in the name of military necessity ("Vertragstreue im Völkerrecht," *Oesterreichische Zeitschrift für öffentliches Recht*, 1915, No. 1). For having supported this argument Dr. Hans Wehberg found himself obliged by Professor Kohler to give up editing the *Zeitschrift für Völkerrecht*. His open letters to J. Kohler (*Humanité* of August 27, 1915, and *Berliner Tageblatt* of September 24, 1915) do him honour.

regarded in proportion as the excesses to which it is opposed are the more violent, in other words that the force of its prohibitions is in inverse order to their necessity. It is systematised anarchy—anarchy raised to the height of a science.

We still have to deal with a last argument, by which certain German publicists have attempted to excuse the application of *Notrecht* to international treaties under cover of a confusion with which they attempt to surround the subject. In a speech uttered in the House of Commons, August 10, 1870, Gladstone, when expressing himself on the subject of the guarantee of Belgian neutrality, formulated the view that the authority of treaties, however solemn their character, does not go so far as to bind the signatory states irrespectively altogether of the particular position in which they may find themselves when the treaty is to be carried into effect.[1] Some German writers, seizing hold of these somewhat vague expressions, have attempted to discover in them an application

[1] *Hansard's Parliamentary Debates*, Vol. CCIII, p. 1787.

of the idea of necessity which would justify the action of their Government.[1]

This is indeed a peculiar comparison which implies nothing less than a real confusion made between two different conditions and two separate systems of defence, which there is not the slightest ground for combining. Gladstone, as the whole context of his statements clearly shows, was referring to the position of momentary incapacity in which a state can find itself placed when, through circumstances not attributable to it, it is unable to perform certain international obligations.[2] We can imagine, for example, that a state which had used up all its forces in a conflict on which its existence depended could not be blamed for appealing to this fact as a cause of release from a promised guarantee. No sort of comparison can be made between such a simple refusal (justified

[1] A. Schulte, p. 75; Kohler, p. 34; Dernburg, "Germany and the Powers, *North American Review*, December 1914; Morris Jastrow, *Germany's Just Cause* (edit. The Fatherland, New York), p. 14.

[2] On the meaning of Gladstone's speech see the articles of Th. Ion in the *Michigan Law Review*, March and April 1915.

by an accidental lack of power) to carry out a guarantee, and that deliberate invasion of a neutral country of which Germany has been guilty.

In law, we may add, such an argument implies a confusion of two systems of defence which are entirely distinct from one another: *Force majeure* on the one side, and on the other the excuse of necessity. *Force majeure* implies that an obstacle has arisen which cannot have been contemplated by the contracting parties, and which has remained as such foreign to their stipulations;[1] in this way it constitutes a complete discharge of the debtor. On the other hand, the excuse of necessity offered by the German Government makes capital, as we have seen, of considerations which the treaties have clearly contemplated and formally proscribed. Such an excuse is entirely irrelevant, for it is irreconcileable with the very object and *raison d'être* of the contract.

[1] § 275 of the German Civil Code.

CHAPTER III

LATER ATTEMPTS AT EXPLANATION—THE VIOLATION OF BELGIAN NEUTRALITY AND THE OBLIGATIONS OF GERMANY

GERMANY, attempting to justify herself on the ground of necessity through the means of her official representatives, had, at first, never dreamed of contesting her obligations, nor of casting doubt upon the completely honourable conduct of Belgium. As she recalled both her own duty imposed on her by international law, and the irreproachable attitude of the country which she was sacrificing to her ambition, Germany openly admitted her error, and deliberately accepted full responsibility for it. A day, however, came when this responsibility she had lightly undertaken became too heavy to be borne. This was the occasion of late

attempts at a justification, which no one even in Germany had had in mind up to that point. Obsessed by the same idea, statesmen and jurists attempted without much success to institute a new type of special pleading founded on entirely different grounds. As was natural, their main efforts were made in two directions. At one moment they tried to discredit the value of the treaties, at another to cast suspicion upon the attitude of Belgium, and thus they undertook in turn or simultaneously to contest the existence of any valid obligations binding on Germany, and to claim their release from them on the ground of imaginary infractions of her own neutrality by Belgium herself.

SECTION I. *Germany, herself a party to the Conventions which protected the neutrality of Belgium, questions the obligatory character of these Conventions*

On August 2, 1914, Germany summoned Belgium to allow the armies she was sending to attack France to pass through her territory.

The ultimatum contained in the "very confidential" note[1] was equivalent to a conditional declaration of war; if Belgium refused to accept it, she would be under the menace of a hostile attack. There could be no doubt as to the answer of the Belgian Government: strong in its consciousness of its rights and its duties, it was prepared to uphold and defend its neutrality with all firmness and by all the means in its power. On the morning of August 4 the first party of German troops entered Belgian territory.

The facts of the case define with perfect precision the nature of the aggressive action against Belgium. Because she had refused to deviate from her duty of impartiality in favour of one of the belligerents, Belgium was plunged into war; her share in the conflict was forced upon her by her persistent refusal to deny the obligations of her neutrality. Thus, in order to ensure for herself the strategic advantages which a rapid offensive through Belgium seemed to promise her, Germany did not shrink

[1] *First Belgian Grey Book*, No. 20.

from the cynical rupture of two solemn engagements. Disregarding at the same time the special status imposed on Belgium and the common law of neutrality, she disowned both the signature placed by Prussia to the treaties of 1839, and the solemn adhesion of the Empire to the Fifth Hague Convention of 1907.

§ 1. *The Rights of Neutrals and the Fifth Hague Convention of* 1907

It is well known that the Fifth Hague Convention respecting the Rights and Duties of Neutral Powers in War on Land, after having recalled to mind the fundamental principle of the inviolability of neutral territory (Art. 1), specially forbids belligerents "to move across the territory of a Neutral Power troops or convoys either of munitions of war or of supplies" (Art. 2). The Fifth Article of the same Convention, in formulating the duties which correspond to the rights of neutrality, decides that a Neutral Power "ought not to allow on its territory any of the acts referred to in Articles 2

to 4." These arrangements were unanimously adopted.[1] Germany ratified them on November 27, 1909.

Nevertheless, certain German jurists have argued that the provisions of this Convention are without obligatory force in the present war.[2] To support this thesis they appeal to Article 20, which lays down that the provisions of the said Convention "are only applicable between the Contracting Powers and only if all the belligerents are parties to the Convention." As a matter of fact, four belligerent Powers, Great Britain, Serbia, Montenegro and Turkey, signatories to the Convention, did not ratify it.

This argument rests on no solid foundation. In fact, at the moment when the violation of Belgian neutrality took place (and also that of the neutrality of Luxembourg), not one of the Powers mentioned was in a state

[1] *Deuxième Conférence: Actes et Documents*, Vol. I, p. 125.

[2] Fr. von Liszt in *Dresdener Anzeiger*, September 23, 1914, and *Berliner Tageblatt*, February 10, 1915; Edm. von Mach, *New York Times*, November 1, 1914. Cf. the *Norddeutsche Allgemeine Zeitung*, November 14, and *Kölnische Zeitung*, December 14, 1914.

of war with Germany.[1] The latter had declared war only on France and Russia. These Powers and the two countries the neutrality of which had been violated by Germany, were the only ones concerned at that moment. All these States had ratified the Convention.[2]

In law, the contention does not for an instant bear examination. As Karl Strupp recognised,[3] the reservations contained in Art. 20 in no way signify that the appearance

[1] Belgian neutrality was violated in the morning of August 4. England's declaration of war, determined by this violation, took place on 11 p.m. of the same day. The state of war between Germany on the one hand and Serbia and Montenegro on the other hand only existed from August 9. As to Turkey, she only entered into the conflict at the beginning of November.

[2] The fact that Great Britain had not ratified the Convention was due to considerations which did not touch the Articles in question. The reservations of England were made only in regard to provisions which related to neutral persons or individuals. (Arts. 16, 17 and 18.) The English military handbook states explicitly that the rules formulated by the Convention which relate to the inviolability of the territory of neutrals should be held binding. *Land Warfare*, Edmonds and Oppenheim, No. 466 and note *b*.

[3] *Das internationale Landkriegsrecht*, pp. 161–162.

on one side or the other of a belligerent—not being a party to the Convention—could render this Convention entirely inapplicable to the mutual relations of all the belligerents. The sole result is that the Convention, considered as a diplomatic instrument, can only be appealed to by the states which ratified it; the alliance does not create in this respect a joint and several liability between allied Powers. Belgium, moreover, has no alliance with Serbia or with Montenegro; Turkey has not declared war upon her. The struggle which she carries on for the defence of her neutrality is entirely distinct from that in which Serbia and Montenegro are engaged. On this account Belgium is in a very peculiar position in the European conflict; from this point of view she could not, as we shall see later on, be likened to an ordinary belligerent (see below, Chapter IV).

In reality this question of the purely technical validity of the Convention is of quite secondary importance, for the binding force of the rules which it contains is completely independent of it. The arrange-

ments for protecting the rights of neutrals solemnly affirmed by Articles 1 to 10 of this Convention are merely a codification of the traditional principles of the law of nations; they are in no way an innovation, their sole object is pointed out clearly in the preamble to the Convention as follows: "With the view of laying down more clearly the rights and duties of Neutral Powers in case of a war on land"; they are thus merely declaratory of existing law. Nothing, then, can be deduced from the plain fact that one or other of the Powers engaged in the actual conflict did not ratify the Convention; the provisions contained in it being in themselves obligatory, independently of any diplomatic document used to recall them to mind, are fully authoritative in regard to all the belligerents.[1]

[1] J. Van den Heuvel, Préface aux *Rapports sur la Violation du Droit des Gens en Belgique*, p. 11; J. Brown Scott, *The Hague Conventions and Declarations* of 1899 and 1907 (Carnegie Endowment for International Peace, 1915), Introd. p. 11. The objection has also been refuted by Zitelmann, *Der Krieg u. das Völkerrecht*, pp. 665–666, and by K. Strupp, *Gegenwartsfragen des Völkerrechts*, Niemeyers Zeitschrift für internationales Recht, 1915, pp. 342–343.

The argument which bears upon the defect in the ratification of the Convention was pushed *ad absurdum* by certain German publicists. As they wished to justify the bombardment by naval forces of undefended ports and towns—acts formally condemned by the First Article of the Ninth Hague Convention—they did not hesitate to take advantage of the want of ratification of this Convention by Montenegro, a state which possesses no navy, and by Serbia, a country with no maritime boundary.[1]

§ 2. *The permanent neutrality of Belgium and the Treaties of* 1831 *and* 1839

It is mainly on the *régime* of permanent neutrality, which is more complex in its constituent elements than that of occasional or voluntary neutrality, that German writers have concentrated their efforts. Some have had recourse to an interpretation of a *Tendenz* character of the treaties of neutralisation in order to reject the obligations

[1] *Kölnische Zeitung*, December 14, 1914.

which they imposed upon Germany (I). Others have tried to weaken the force of these treaties by referring to their alleged obsolete character (II).

I. THE MISLEADING INTERPRETATION OF THE TREATIES OF NEUTRALISATION

The German invasion and the inviolability of Belgian territory.—Many German publications have sought to gain credit for the following contention.[1] The guarantee of the integrity and territorial inviolability of Belgium, expressly formulated in the preliminary Act of the XVIII Articles, does not occur in the Treaty of November 15, 1831, nor in the definitive treaties of 1839. The text of these treaties, then, it is said, would

[1] Kohler, *Not kennt kein Gebot*, p. 87; Schulte, pp. 66–68; H. Wittmaack, *Die Neutralität Belgiens*; Rosenberg, *Der Deutsche Krieg und der Katholizismus*, p. 87. See also Norden, *La Belgique neutre et l'Allemagne*. We do not mean to compare the publications of the juridical type that we deal with in the course of this study with this slender pamphlet, written in a declamatory style and pretentious manner. The excessively peculiar views of the author on "permeable" neutrality belong to the domain of imaginative literature.

limit the object of the guarantee to the maintenance of a perpetual neutrality. If we were to accept the views of certain authors, the result would be that "the German invasion of 1914 should imply no violation of Belgian neutrality" (Schulte, p. 68), so long as it only implied a passage across territory, which, they said, was perfectly reconcileable with neutrality.

Certainly it would be grievous if an argument of such force had really escaped the attention of German statesmen. The Chancellor of the Empire might have been spared his public avowal of the injustice dealt out to Belgium by the entry of German troops into that country (Séance of the Reichstag, August 4, 1914). The publicists who glory nowadays in this singular thesis, loudly invoke the authority of Ernest Nys, professor at the University of Brussels, and the formal adhesion given to it by the late Lieutenant-General Brialmont.

It is well known that Nys, when he compared the wording of the preliminary formulas with that of the definitive treaties, was moved to assert that the guarantee of the

integrity and territorial inviolability, formerly given to Belgium by the five Powers, had eventually been withdrawn.[1] The favourable reception of this thesis in certain Belgian circles, a fact of which the German writers have made so much, was due to some men who were more conscious of the very real danger of the international situation of Belgium than judicious in the choice of their arguments. But the change in wording which is the foundation of Nys' argument, bears by no means the import which has been attributed to it. This result is apparent when we compare the different formulæ which relate to the guarantee, and when we read with attention the diplomatic documents which were concerned in the matter of its adoption.

Article 9 of the Preliminaries of June 26, confirming Article 5 of the Bases of Separation (Protocol of January 20) was expressed as follows: "La Belgique, dans ses limites telles qu'elles seront tracées conformément

[1] *Le Droit International*, Vol. I, p. 424; "Notes sur la Neutralité," *Revue de Droit International et de Législation comparée*, 1901, p. 44.

aux principes posés dans les présents Préliminaires, formera un Etat perpétuellement neutre. Les cinq Puissances, sans vouloir s'immiscer dans le régime intérieur de la Belgique, lui garantissent cette neutralité perpétuelle, ainsi que l'intégrité et l'inviolabilité de son territoire dans les limites mentionnées au présent article."

Article 25 of the Treaty of November 15, 1831, was expressed in the following terms: "Les Cours d'Autriche, de France, de la Grande-Bretagne, de Prusse et de Russie garantissent à S.M. le Roi des Belges l'exécution de tous les articles qui précèdent." In the same way the First Article of the Treaty of April 19, 1839, the text of which has been given above (pp. 4–5), placed under the guarantee of these Powers each and all of the provisions contained in the treaty concluded on the same day between Belgium and the Netherlands.

If we simply compare the documents the reason for the change in wording which refers to the guarantee becomes apparent. The formula of the Preliminaries, closely connected with the provision that referred

to the neutrality, had quite naturally specified the matter of territorial inviolability as one of the elements of this neutrality. On the other hand, the guaranteeing clause which appears in the definitive treaty was not to mention any of the objects of the guarantee, as it was a clause of a completely general character; unconnected in any special way with any single article of this treaty, it applies without distinction and exclusively to all its provisions.

If from the study of the texts we pass to that of the diplomatic *pourparlers*, the inanity of the contention against which we protest becomes even more evident. It is useless to attempt to explain the supposed withdrawal of the guarantee of territorial inviolability by means of the reverses experienced by the Belgian army in August 1831. A change of such considerable significance could hardly have failed to raise a new discussion, the traces of which should have been discoverable in the *pourparlers* which occurred later than the August campaign. As a matter of fact these *pourparlers* dealt almost exclusively with three

points: the territorial frontier between Belgium and Holland, the question of the Grand Duchy of Luxembourg, the division of the debts. It is solely in the settlement of these questions that the effect of the recent defeats made itself felt. The note submitted to the Conference by the Belgian plenipotentiary, Sylvain van de Weyer, on the eve of the signature by Belgium of the Treaty of the XXIV Articles (note of November 12, 1831)[1] contained, moreover, the complete and detailed expression of the modifications which the Belgian Government desired to see inserted in the text of this treaty. This note, which concerned very numerous matters, some of which were only of secondary importance, formulated no objection to the new wording of the guaranteeing clause. Everything shows in the most convincing way that the question had been definitely settled some time-ago.

Besides, how could the Powers have given their consent to a change which would have led to nothing less than to despoil of all

[1] Protocol, No. 52, Appendix A; de Martens, *Nouveau Recueil*, Vol. XI, p. 350.

practical efficacy the guaranteeing clause—one drawn up for their mutual advantage as well as for the benefit of Belgium? Since the guarantee given for permanent neutrality had for its object, as Geffken says, "to prevent a country which is particularly exposed on account of its geographical situation from becoming the theatre of hostilities between nations," [1] what would be the use of a guaranteeing clause which contained nothing about the inviolability of territory? We may assuredly conceive of a guarantee limited to that of inviolability of territory, to the exclusion of all other elements of neutrality; an example of this is the Treaty of November 2, 1907, which guarantees to Norway the integrity of her territory.[2] But the guarantee of neutrality necessarily implies the guarantee of a territorial inviolability which forms an integral part of such neutrality: "it is impossible to guarantee the whole without guaranteeing the part." [3]

[1] von Holtzendorff, *Handbuch des Völkerrechts*, Vol. III, p. 93.

[2] Bredo Morgenstierne, "Norway's Integrity and Neutrality," *Law Quarterly Review*, 1915, p. 389.

[3] Descamps, p. 537.

Besides, it is well known that it was chiefly to assure the inviolability of Belgian territory that England, acting as a guaranteeing Power, took the initiative in concluding the Anglo-German and Anglo-French treaties of August 9 and 11, 1870.[1]

However it may be, Kohler, Schulte, and others, when they argued from the thesis sustained by the learned Belgian jurisconsult a support for the legality of the German invasion, fell into a capital error. They confused the duties undertaken for the Powers by *neutralisation* with those concerning the *guarantee;* they confused obliga-

[1] Errors relating to guarantee are particularly numerous. For example, Kohler (*Notwehr u. Neutralität*) and K. Strupp (*Landkriegsrecht*, p. 182, note 8) are incorrect when they reproach England, in her declaration of war on the ground of the violation of Belgian neutrality, for abandoning the thesis of the purely collective guarantee (as opposed to a separate and individual guarantee) formerly supported by certain of her statesmen. This thesis, advanced in 1867 by Lord Derby and Lord Stanley in reference to Luxembourg (and which, by the way, encountered even in England some very sharp criticism), would render the value of the guarantee purely illusory. *It was never supported by the British Government in reference to Belgium.*

tion and the pledge, an engagement entered into by each Power personally to respect Belgian neutrality with the supplementary obligation to take an active part in maintaining or re-establishing it. The distinction is a fundamental one: "the guarantee," as Nys truly says, "is in no way an indispensable element in permanent neutrality: the latter may be agreed upon without a guarantee." [1]

But there is worse to come. In the *Deutsche Tageszeitung*, October 22, 1915, Count Reventlow, using all his efforts to prove that the inviolability of Belgian territory was never regarded by England and

[1] *Revue de Droit International et de Législation comparée*, 1901, pp. 37–38. The statement of Professor Kohler is on this point marked by the most extraordinary confusion of mind. The distinction between the effects of neutralisation and those of the guarantee escapes him completely. As the guarantee does not comprise the inviolability of territory, "Belgium," he says, "found herself in this respect in the same position as non-neutralised states. Germany, from this point of view, had contracted no obligation." Did the Berlin professor advance in all good faith a thesis the refutation of which can be found in every manual of international law? See for example, von Liszt, *Das Völkerrecht* (1915), p. 68.

by Belgium herself except as a question for political opportunism, appeals, as a support for his thesis, to an article of the Belgian Constitution which says "that it is for the Belgian Parliament to decide whether the troops of another Power should be allowed to go through the country or not."

The passage referred to is Article 121 of the Belgian Constitution: "No foreign army may be admitted to the service of the State, may occupy or pass over the territory except by virtue of a law." It is the acme of folly to quote against Belgium a passage in which Congress affirmed in the most striking way the principle of the national sovereignty of Belgium and of her independence of any foreign influence. We will remind those who ignore, or feign to ignore, the origin of Article 121, that this passage, borrowed, like many others, from foreign constitutions, owes its origin to the fusion of two texts, one extracted from the Constitution of the Directory of the year iii, the other from the French Charter of 1830.[1] Besides, Belgium

[1] *Constitution de l'an III*, Art. 295: "Aucune troupe étrangère ne peut être introduite sur le territoire

might find herself obliged to enter into a defensive war. From the fact that the Constitution marked out the power which might eventually authorise the passage of a relief force, it would evidently not be right to conclude that this was intended to legalise a passage through territory in a way that contravened neutrality.

Again, it is a false interpretation of the treaties of neutralisation which has given rise to the following thesis, supported by Ernst Müller.[1] According to this writer, the state of war between the five Powers signatories and guarantors of the treaties of neutralisation would have put an end, *ipso jure*, to the permanent neutrality of Belgium as constituted by those treaties. The situation which arose at the beginning of the month of August 1914 thus would have justified the entrance of German troops into Belgium.

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français sans le consentement préalable du Corps législatif." *Charte de* 1830, Art. 18, § 2: "Aucune troupe étrangère ne pourra être admise au service de l'Etat qu'en vertu d'une loi."

[1] *Der Weltkrieg u. das Völkerrecht*, p. 28.

We might confine ourselves to remarking that the right of Belgium to the inviolability of her territory in the case of a conflict which did not directly concern her, rests upon the common law of neutrality and is independent of any special convention. But we wish formally to refute a thesis which has no basis either in fact or in law.

As a matter of fact, the violation of Belgian neutrality preceded any share taken by England in the European conflict. It was no doubt one of the determining factors in this participation.[1] From the juridical point of view the contention makes short work of the rights proper to Belgium in respect of the *régime* established by the treaties of neutralisation and of those of the other Powers who were parties to those treaties. One is apt to forget [2] that Belgium acquired, as one of the contracting parties, irrefragable rights in regard to each and all of the five Powers, Powers which are linked

[1] *Blue Book*, Nos. 128, 155, and 159.

[2] See, for example, H. Wittmaack, *Die Neutralität Belgiens;* Peters, *Unsere Feinde u. das Völkerrecht, Preussische Jahrbücher*, January 1915, p. 189.

not only among themselves, but also with Belgium herself. In the maintenance of the immunity conferred upon her, one which formed the counterpart of the special obligations which were hers by reason of her permanent neutrality, Belgium had an interest which was distinct in character from that of all the other Powers intervening in the Treaties of 1831 and 1839. She could not, then, in any way consider herself deprived of it by the state of war which arose between these Powers. If we merely consider the mutual relations of these states, war could not release them from obligations imposed on them by the treaties of neutralisation. It is a principle that is universally acknowledged and is also self-evident, that a state of war affects in no way treaties which have been concluded with special relation to a state of war. In the very first rank of those treaties we find the conventions of neutralisation.[1]

[1] See especially Kleinfeller, *Der Einfluss des Krieges auf völkerrechtliche Verträge*, Niemeyers Zeitschrift für internationales Recht, 1915, p. 383. Cf. Lueder, von Holtzendorff, *Handbuch des Völkerrechts*, Vol. IV, p. 856.

II. THE ALLEGED OBSOLETE CONDITION OF THE TREATIES OF NEUTRALISATION

The definitive treaties relating to the neutralisation of Belgium date from 1839. If we were to believe numerous German publicists, the political changes which have arisen in the course of the period of seventy-five years which separates the conclusion of these treaties from the events of August 1914, are to be considered as having modified the whole of the institutions founded on these treaties to the point of completely changing their original significance and of marking them as inoperative. According to some, these treaties have lost their binding force only in regard to Germany; according to others the modifications made by Belgium herself in the original direction of her political aims is presumed to have brought about the complete and absolute abrogation of the treaties.

It should certainly be sufficient to place side by side with this audacious assertion the formal declarations made a year before the war by the members of the German

Government. It is well known that when they were invited to explain themselves before the Budget Commission of the Reichstag on the presumed intention of the military authorities not to respect Belgian neutrality in case of war between France and Germany, M.M. von Jagow, Secretary of State for Foreign Affairs, and von Heeringen, Minister of War, both gave the formal assurance that "Germany would respect Belgian neutrality, which was guaranteed by international treaties." [1] But here again the apologists of the German Government have made some surprising corrections of the official view. Let us pause for a moment to weigh their worth.

(*a*) *The German Empire pretends not to have succeeded to the obligations undertaken by Prussia in* 1839

We owe to Professor J. W. Burgess, of the University of Columbia, the credit of having attempted to reinstate for the benefit of German policy one objection which was

[1] *First Belgian Grey Book*, No. 12, annexe.

already worn threadbare and fully refuted.[1] According to him the obligations contracted in 1839 by Prussia should have been cancelled by the entry of this state into the North German Confederation in 1867 and into the German Empire in 1871. On the other hand, neither the one nor the other of these new political bodies having assumed obligations in respect of Belgium, the treaty of 1839 would be in regard to Germany merely a document the interest of which was purely retrospective, deprived of all obligatory character. In support of this assertion Professor Burgess appeals to the parallel treaties of August 9 and 11, 1870, concluded by Great Britain on the one hand with Prussia, and on the other hand with France. The mere fact that these treaties were concluded with the object of guaranteeing respect for Belgian neutrality by the belligerents, would, he thinks, be a proof of the cancelling of the constructive treaties. But, besides, as the application of the treaties of 1870 had been expressly limited (Art. 3) to the duration

[1] *The Vital Issue* (New York), No. 4; *The European War: its Causes, Purposes, and probable Results.*

of the war and to twelve months after the ratification of the treaty of peace, it would result that at any rate after 1872 Belgian neutrality had come to an end, so far as Germany was concerned.[1]

There is no need to enter into long discussions about the rather complex question of the succession with regard to the international liabilities of a state becoming a member of a federal state. The foundation of the Empire, which only implied from the constitutional point of view, an "extension of the North German Confederation," [2] did not bring about the absorption of the states which compose it to the point of destroying their international and

[1] See for similar views, A. Schulte, p. 75–76; Dernburg, "Germany and the Powers," *North American Review*, December 1914; A. Fuehr, *The Neutrality of Belgium*, chap. viii. Note that the more weighty of the German writers avoid recourse to this argument; some of them even expressly refute it. See, *e. g.*, K. Strupp, *Vorgeschichte u. Ausbruch des Krieges*, *Zeitschrift für Völkerrecht*, Vol. VIII (1914), p. 781, note 4, and Frank, *op. cit.*, p. 13, 14. Professor Kohler, however, considers the argument a plausible one (*Not kennt kein Gebot*, p. 35).

[2] Laband, *Deutsches Reichsstaatsrecht*, p. 13.

independent personal character, nor produce the cancellation of their private treaties. More than once Germany has herself appealed for reasons of advantage to treaties concluded by Prussia before she entered into the North German Confederation; and her argument has been expressly adopted in important decisions of the courts of the United States.[1]

We must add, for this is decisive, that Germany has twice over and emphatically claimed in the course of the present war (case of the *William P. Frye*, and case of the *Appam*) to refer to the old Treaty of July 11, 1799, concluded between the United States and Prussia and renewed by those Powers, May 1, 1828.

As for the argument based upon the temporary treaties of 1870, it recoils, as we shall see, against those who resort to it. We shall find in the text itself the clear proof of the transmission of the pledges, the dissolution of which is alleged.

From the beginning of the Franco-German

[1] Cf. *American Journal of International Law*, October 1915, pp. 952 *et seq.*

War the revelation of certain diplomatic *pourparlers* known to history as the "Benedetti treaty," had led the British Government to entertain doubts, not, indeed, about the continuous juridical value of the treaties of 1839, but about the attention paid to them by the belligerents. These uncertainties determined the British Government to make a proposal to the two adversaries, viz. to regulate the guarantee in the sense of co-operation between the British forces with the forces of one of the belligerents against the other in case of the violation by the latter of the neutrality of Belgium. As Geffken has clearly pointed out, the double treaty, "far from impairing the original treaties, only aimed at regulating the observance of them in a given case."[1] It is, however, by a reference to the interpretation given to the treaty of 1870 by those who were negotiating in the matter, and to the text itself, rather than to any other considerations, that we shall look for a definite and full understanding of the true content

[1] von Holtzendorff, *Handb. des Völkerrechts*, Vol. IV, p. 642.

and aim of the treaty. On July 22, 1870, Count Bismarck wrote a letter couched in the following terms to Baron Nothomb, Belgian Minister at Berlin: "I have the honour to hand to you by letter the declaration, *superfluous indeed in the face of existing treaties*, that the North German Confederation and its allies will respect the neutrality of Belgium, it being of course understood that this neutrality will be respected by the other belligerent party." The English Cabinet, on its part, through the medium of Mr. Gladstone, gave explanations to the House of Commons which were entirely in harmony with the above, having reference to the import of the treaties in the making of which the Cabinet had taken the leading part. "I find," he said, "that by one of the articles contained in this instrument the Treaty of 1839 is expressly recognised." "The Treaty of 1839," he added, "loses nothing of its force even during the existence of this present Treaty. There is no derogation from it whatever." [1]

[1] Sitting of August 10, 1870. *Hansard's Parliamentary Debates*, Vol. CCIII, pp. 1784 and 1789.

No less explicit were the declarations made on August 8 by the Secretary of State for Foreign Affairs, Lord Granville, in the House of Lords. "There is one objection," he said, "which I believe is entirely without foundation—namely, that the very fact of this treaty which we propose being entered into will, in the slightest degree, impair the obligations of the Treaty of 1839. Those obligations we have expressly reserved in the words of this Treaty." [1]

In truth there is no legal quibble able to prevail against the absolutely decisive argument of the text itself of these treaties. Even in the Preamble the High Contracting Parties declare expressly that this separate Treaty "without impairing or invalidating the conditions of the said Quintuple Treaty (of 1839), shall be subsidiary and accessory to it." Article 3 arranges that at the expiration

[1] *Hansard's Parl. Debates*, Vol. CCIII, p. 1675. Finally, on August 16, before the Belgian Chamber, Baron d'Anethan, Minister of Foreign Affairs, defined the object of the Treaty in the following terms: "These Treaties neither create nor modify the obligations which are a consequence of the Treaty of 1839: they determine for a given case the practical method of carrying out these obligations."

of the term fixed for the application of the Treaty, "the Independence and Neutrality of Belgium will, so far as the High Contracting Parties are respectively concerned, continue to rest as heretofore on Article 1 of the Quintuple Treaty of 19th April, 1839." [1] Besides, how could a Convention in which took part only three of the Powers who were signatories to the treaties of 1839 be substituted for these treaties and result in a novation of them?

Thus the purely regulating character of the treaties of 1870 can be irrefragably demonstrated. Possibly, however, the conclusion which is reached in the matter of the transmission of the obligations originally

[1] We are obliged to note that this decisive text has been omitted, for the purposes of their polemic, by the German propagandists. Moreover, we cannot here draw attention to all the errors propagated on this subject by certain German publicists. Wittmaack, *e. g.* (*loc. cit.*, pp. 216, 217), sees a definite proof of the dissolution of the constructive treaties in the fact that Article 8 quoted in the text refers to Article 1 of the treaty of 1839, an arrangement which, he says, makes no mention of the guarantee. We have recalled to mind the terms of this Article (*vide supra*, pp. 4–5) which expressly formulates the obligation to guarantee.

assumed by Prussia has hardly been sufficiently realised. It was not only in his character of King of Prussia that King William signed the Treaty of August 9, 1870; it was also as President of the North German Confederation, and through the latter these obligations were handed on to the Empire.[1]

(*b*) *The argument of the obsolete character of the treaties as brought about by reason of new political circumstances. The reservation* "rebus sic stantibus"

It is the notion of the maintenance of the balance of power in Europe which accounts for the origin of Belgian neutrality.[2] Although not a legal principle, the principle of the balance of power constitutes none the less an essential constituent of the actual international organisation; it secures the safety that would otherwise be compromised by the overpowering supremacy of one state

[1] This is recognised by W. Schoenborn, *op. cit.*, p. 574.

[2] Protocol, No. 7, of December 20, 1830; de Martens *Nouveau Recueil de Traités*, Vol. X, p. 125.

in relation to all the other members of the community of nations.[1]

Many German authors, in order to establish the voidance of the treaties of neutralisation, have tried to find a ground for argument in the radical changes which, according to them, affected the foreign policy of Belgium after 1839. It is suggested that Belgium, as a result of the direction given to her military organisation and of her entry into colonial politics, entirely modified her original position in regard to the rest of Europe; that she thus became directly responsible for one of those vital changes in circumstances which, by removing from international treaties their very *raison d'être*, result in the dissolution of such treaties.

Any complete refutation of these very general assertions, which are often formulated in the vaguest possible manner, would lead us outside the scale of this work. We

[1] "There is no possible security in international life when one State has so great a preponderance over others as to allow it to menace their liberty of action, their interests and their national integrity." Heffter, ed. Geffken, *Le Droit International de l'Europe* (trans. Bergson), p. 11, note.

will therefore only concern ourselves with refuting the main points.

It has been said [1] that Belgium has from the beginning been bound to keep up a system of military defence plainly directed against France. The Convention of December 14, 1831, relative to the Belgic fortresses, imposed on her the task of maintaining and keeping perpetually and in good order certain strongholds, a survival of the ancient Barrier system. A secret clause signed by King Leopold I, even imposed on her the duty of concerting with the four Northern Powers suitable measures for ensuring the defence of these strongholds in case their safety might be compromised. When Belgium gave up this system of defence in order to substitute for it a military organisation of purely national interest, with its base situated at Antwerp, she is said, in the first place, to have misunderstood the obligations imposed on her by the treaties of neutralisation, and next, to have openly violated them herself by

[1] Schulte, pp. 78–93; Wittmaack, pp. 212 *et seq.*; Hampe, pp. 357 and 367–372; Veit Valentin, pp. 21–22; E. Müller, pp. 22–26; Dr. B. Dernburg, *The Case of Belgium*, p. 2.

erecting, in 1887, fortifications on the Meuse which were exclusively directed against Germany.

This proposition rests upon a radically false conception of Belgian neutrality, and on an erroneous interpretation of the facts.

The essential significance of Belgian neutrality is falsified by any attempt to deduce its obligations from the merely transitory political circumstances which were connected with its origin. If we read the diplomatic documents which are concerned with the treaties of neutralisation we shall see that they, as well as the text of the treaties, testify to the unanimous will of the five Powers to raise the neutrality to the position of a permanent institution, and to make of it a permanent element in the European political order.[1]

On the other hand, the "political constellation" of Europe—to use an expression dear to the German mind—is subject to perpetual modifications; its movements bring out profound changes in the relative position and

[1] See especially the Protocol No. 12 of January 27, 1831, de Martens, *Nouveau Receuil*, Vol. X, p. 170.

grouping of the Powers. Belgian neutrality could only adapt itself to these ends by a constant variation of the system of defence of the country, by which it could answer to the varying demands of the balance of power in Europe. It would be impossible, therefore, to attribute to the Powers an intention, which in itself would be absurd, of tying Belgium closely to a type of military organisation which sooner or later must inevitably cease to answer the new demands that must arise. It is useless to attempt to take advantage of the Convention of fortresses and the secret clause added to it. These stipulations, though they are a witness to the fears felt at that time in regard to a possible offensive move on the part of France, were formally subordinated to the respect for Belgian neutrality in which they originated.[1]

The interpretative declaration of January

[1] The stipulations of fortresses and of the secret clause were also appealed to to support a contention according to which the guarantee of the Powers would not have comprised the inviolability of Belgian territory (*supra*, § 2, I). It is suggested that these Conventions implied an intention among the four Northern Powers to reserve for themselves a right to intervene

28, 1882, which was signed (this is to be noted) by the plenipotentiaries of the Northern Courts at the express request of the French Government, states that the provisions of the Convention of fortresses "cannot and ought not to be understood except as reserving the full and entire sovereignty of His Majesty the King of the Belgians over the fortresses indicated in the said Convention, and also as reserving the neutrality and independence of Belgium, an independence and a neutrality which, guaranteed on the ground of the same rights by all five Powers, should establish a link of an identical nature between each of these

in Belgium, such right not being compatible with a guarantee of territorial inviolability. (Kohler, "Die Neutralität Belgiens und die Festungsverträge," *Zeitschrift für Völkerrecht*, Vol. IX (1915), p. 298; Norden, *op. cit.*, p. 23 *et seq.*; Wittmaack, *loc. cit.*, p. 212.) But such a view is in complete contradiction to the diplomatic documents which are directly connected with the making of these Conventions. The Protocol of April 17, 1831 (de Martens, Vol. X, p. 243), expressly justifies by "the inviolability, which is unanimously admitted, of Belgian territory," the proposed destruction of fortresses, which was later decided upon by the Convention of December 14, 1831. The harmony of view in the two Conventions is complete.

Powers and Belgium."[1] In conclusion, the plenipotentiaries declared they were placing beyond doubt "that all the clauses of the Convention of December 14 are in perfect harmony with the character of a neutral and independent Power which the five Powers recognise to be the status of Belgium." As to the secret clause, which, moreover, was never ratified by the Belgian Parliament, its value was expressly limited by the obligations which her perpetual neutrality imposed on Belgium (*sauf les obligations qu'imposera à S.M. le Roi des Belges et aux quatre Cours elles-mêmes la neutralité perpétuelle de la Belgique*). This reservation rendered the clause harmless, and allowed King Leopold to consider it as without practical value, because it had no significance of its own (Letter to General Goblet, Belgian envoy at the Conference at London, December 17, 1831).[2] Moreover, many German writers recognise that the interpretation which they give to the clause

[1] de Martens, *Nouveau Recueil*, Vol. XII, p. 880.

[2] Nothomb, *Essai historique et politique sur la Révolution belge*, Vol. I, p. 511.

is absolutely irreconcileable with the existence of a *régime* of neutrality.[1] Obviously, then, the defence of Belgian neutrality is the one and only object of the defensive system sketched out in these Conventions.

However, from a military as well as from a political point of view, this system was a survival of a state of things which had definitely lapsed. The same reasons which induced the Northern Powers to lessen its importance by demolishing several fortresses,[2] would inevitably lead some time or other to the complete destruction of the system.

An effective defence of a chain of fortresses —and those far too numerous—in the southern part of the country could not be undertaken by the Belgian army; the occupation of these strongholds by English and German contingents could be prevented by means of a rapid invasion of French forces concentrated on the frontier. These considerations decided the Belgian Government, towards the middle of the nineteenth century, to substitute for the

[1] Wittmaack, *op. cit.* p. 214.

[2] Convention of April 17, 1831, de Martens, *Nouveau Recueil*, Vol. X, p. 248.

principle of a dissemination of its forces, that of a concentration at Antwerp, as a military base. This change took place without exciting the slightest opposition on the part of the Powers. It is to be remembered, too, that some years after these changes had been brought about in her military organisation, a formal declaration of the Powers that were signatories to the Treaty of May 11, 1867, involving the neutralisation of the Grand Duchy of Luxembourg, aimed at leaving to Belgium no less than complete liberty in the choice of the means suitable for defending the country. By the terms of this declaration, added, at the request of the Belgian plenipotentiary, to the fourth Protocol of the Conference of London it was expressly provided as follows:—"It is understood that Article 3" (ordering the dismantling of the fortresses on the territory of the Grand Duchy) "in no way affects the right of the other Neutral Powers to maintain and if necessary, to improve their fortresses and other means of defence."[1]

[1] de Martens, *Nouveau Recueil général*, Vol. XVIII, p. 444; *British and Foreign State Papers*, Vol. LX, pp. 507–509.

When the entrenched camp of Antwerp was formed, the army in the field, till that time without a support, found that a first-rate base of operations had been secured for it.[1] Though perfectly adapted to its proper objective such an arrangement was incomplete: if it realised the needs of national defence in the eventuality of a direct aggression inspired by the desire of conquest, it provided less satisfactorily for the protection of the neutrality of Belgium in the supposed case of a violation of territory by a belligerent with a strategical aim. From this point of view the defence of the valley of the Meuse, considered as a line of possible operations by an invading army, was of vital importance to Belgium, and this consideration would come out more clearly in proportion as the peril declared itself. In a study which is full of original and profound thought, Emile Banning drew attention to the very significant changes of attitude on the part of German military authorities

[1] Dr. Hampe himself recognises the very important improvement made by this reform on the preceding organisation of the forces (*loc. cit.*, p. 868).

with regard to the plans for the fortifications on the Meuse.[1]

From 1855 onwards, and during a period extending till after the war of 1870, the German Staff had unceasingly insisted through its military attachés, on the urgent necessity of fortifying the line of the Meuse in order to ward off the possibility of a French invasion. Now, towards the year 1875, a new situation, resulting from the Franco-German War, forced itself on the attention of the Belgian Government. Since the defences piled on the two slopes of the Vosges rendered the success of a plan of direct attack more and more problematic in that quarter, it seemed as if an enemy would try to obtain the advantage of a rapid offensive in the line of least resistance offered by the valley of the Meuse. Brialmont's plan, which resulted in 1887 in the erection of fortified bridge-heads at Liége and Namur, was intended to meet the necessities of the situa-

[1] *Considérations politiques sur la défense de la Meuse*, a paper written in 1881, revised and completed in 1886, reproduced in the *Cahiers documentaires* (Publications of the Bureau documentaire Belge), Nos. 1 to 5.

tion, by opposing to an invading army obstacles which were so considerable as to render the success of their enterprise at least doubtful.

It was precisely at the moment when these strategic considerations, which had become more and more pressing, had at last secured for Brialmont's plan the assent of the Government and of the Belgian Chamber, that a most remarkable change manifested itself in the attitude of the German high command. Von Moltke, far from seconding the plan, showed himself to be definitely opposed to it; from this time onwards the fortification of Namur seemed to him to be a matter of greater inconvenience than advantage.[1] Obviously, "Germany did not wish to meet fortresses on the Meuse" (Banning, *loc. cit.*). Thus, while one party representing German opinion continued to look upon the inviolability of Belgian neutrality as the best defence of the

[1] Banning, *op. cit.* Schulte naively attempts to show that had Belgium followed this advice, she would have been spared all her misfortunes. "In the course of a fortnight," he says, "her territory would have ceased to be the theatre of war" (*op. cit.*, p. 91).

Empire and its strongest rampart,[1] a plan of an offensive against France across Belgian territory began to take shape in military circles. In fortifying the line of the Meuse, Belgium had had but one idea, that, namely, of safeguarding her own neutrality. The witness of facts is here so eloquent that some German publicists have given up impeaching the intentions of the Belgian Government.[2] Finally we may recall to mind that the misunderstanding produced by the disclosure of certain documents which referred to the new plan of defence, gave rise, towards 1890, to such a state of alarm in France that press attacks were delivered against Leopold II and his ministers, who

[1] Karl Hillebrand: "But far more prominent and more considerable (than the interest of France) is the interest of Germany in the maintenance of the Belgian State and its neutrality. Belgium takes the place to Germany of a whole army and a chain of fortresses. . . . It is thanks to this neutrality that the war of 1870 did not degenerate into a world-wide war, and if—which God forbid—such an impious war were to arise again, doubtless the same phenomena would be reproduced." Zeitgenossen und Zeitgenössisches (*Zeiten, Völker und Menschen*, Vol. VI. p. 284).

[2] See, *e. g.*, Hampe, *loc. cit.*, p. 870.

were accused of having violated the neutrality of the country by concluding a secret military treaty with Germany.

* * * * *

Of latter years German publicists have bestowed unusual attention on Belgium's colonial policy. Their insistence on this subject clearly betrays the German claim of a policy of colonial expansion in the pursuance of which the violation of Belgian neutrality might be involved.[1]

It would seem very difficult to accuse Belgium of compromising her neutrality in the eyes of Europe by the annexation of the Congo, when we consider that the Powers unreservedly agreed to this annexation. Germany, as is well known, displayed a very exceptional cordiality in her recognition of the annexation. From January 22, 1909, anticipating the action of the other

[1] These ambitions were unveiled by Herr von Jagow in a conversation with M. Jules Cambon early in 1914. The Secretary of State then suggested to the French Ambassador an arrangement at the expense of the Belgian Congo (*Second Belgian Grey Book*, No. 2). See under this head the involved explanations of the *Norddeutsche Allgemeine Zeitung*, August 6, 1915.

Governments, Herr von Schoen, Secretary of State for Foreign Affairs, had declared in the Reichstag that the Imperial Government considered this annexation to be concluded. The theoretical objection put forward by certain writers, as one arising from a presumed incompatibility of Belgian neutrality with any new acquisition of territory, was refuted long ago by many German jurists.

In no way did this annexation injure Belgian neutrality or its guarantee. It is true that the Independent State of the Congo, using the power given to it by the General Act of Berlin (Article 10), had, since 1885, declared itself perpetually neutral (Declarations of August 1, 1885, and December 28, 1894); but, as Professor von Stengel, of the University of Munich, recognised, "the neutrality of Belgium and that of the Congo have nothing in common with one another . . . it is clear that Belgian neutrality is an imposed neutrality, guaranteed by other Powers, while the neutrality of the Congo State is a voluntary neutrality and is without the guarantee of other states. This

difference would exist in the same way if the Congo State were to become a Belgian colony: Belgian neutrality and that of the Congo depend upon juridical bases which are quite distinct, and a state and its colonies can have conditions which are very different seen in regard to their neutrality."[1]

But German publicists lend themselves to the discussion of the political consequences of the annexation rather than to that of the legal objections, the weakness of which they themselves recognise.[2] If we accept the view of one of them, Veit Valentin, the annexation of the Congo would be considered to have led to the loss of Belgium's political independence, for Belgium would have put herself henceforth under the influence of the two great colonial Powers of Africa—England and France.[3]

Surely no one who remembers the diffi-

[1] *Revue de Droit International et de Législation comparée*, 1905, p. 428.

[2] Certain German authors deliberately put them aside. See, *e. g.*, R. Frank, *op. cit.*, p. 14.

[3] Veit Valentin, *Belgien und die grosse Politik der Neuzeit;* Hampe, *op. cit.;* Dernburg, *The Case of Belgium*, p. 2.

culties met with in the beginning of Belgian administration in the Congo could possibly suppose that the entry of Belgium into colonial politics had contributed to bring her nearer to England. But how is it to be explained that such allegations were authorised by the same men who on other occasions recall with satisfaction the opposition of interests of England and Belgium in Central Africa, and the press campaign directed in England against the administration of the Congo? [1]

It was presumably not only for the sake of England, but also in favour of France, that Belgium is held to have sacrificed the duty of neutrality to the interests of colonial policy. It is known that a right of pre-emption had been granted to France in 1884 by the International Association of the Congo in view of the possibility of the latter

[1] This is not the place to discuss the imputations of Germany which relate to a supposed violation of the neutrality of what is known as the "conventional" basin of the Congo by Belgian troops. The refutation will be found in the documents published in the *Second Belgian Grey Book*, Nos. 58 and 67. Belgium wished that the war should not be extended to Central Africa (*First Belgian Grey Book*, No. 57).

being obliged to realise its possessions. The exercise of this right, which was confirmed in 1885 as a result of the substitution of the Independent State for the International Association, was definitely regulated by an arrangement of December 23, 1908, concluded in view of the taking over of the Congo by Belgium. In conformity with the principles of international law in the matter of the annexation or cession of a state, Belgium took over, together with the possessions in the Congo of King Leopold II, the obligations connected with these possessions. The arrangement was approved by the Belgian Parliament, December 29, 1910: ratifications were exchanged on April 4, 1912.

Dr. Veit Valentin (*op. cit.*, p. 24) professed to see in this exchange of ratifications a violation planned by Belgium and France of the rights reserved to Germany by Article 16 of the Franco-German Convention of November 4, 1911; an article which provided that any modification in the territorial statute of the so-called "conventional" basin of the Congo should be withheld until a consultation had taken place among the

Powers which were signatories of the Treaty of Berlin.[1]

This peculiar form of argument, which we may say in passing had never been used in any protest by the German Government, can be easily refuted. The arrangement of December 23, 1908, ratified in 1912, was confined to a confirmation in the interests of France of a right which she had acquired more than twenty years ago; it brought about no actual modification in the territorial status of the Congo Colony, the realisation of the right conceded to France being expressly subordinated (Article 1) to a future state of things which at present has not come about: that is, the alienation on the part of Belgium of her possessions in the Congo.

Besides, as Belgium was not a party to the Franco-German Convention of 1911, this Convention was in regard to her *res inter alios acta* and could not impose any obligation upon her.

It must be emphatically asserted that Belgium had never furnished Germany with

[1] de Martens, *Nouveau Recueil*, 3rd series, Vol. V. p. 659.

a shadow of a pretext which could have authorised this latter Power to throw off its obligations by appealing to the clause *rebus sic stantibus*. Belgium has been faithful to the political advice of her first King, and "neutrality has been the true end of her policy," which in this respect has borne witness to a continuous tradition.

But we must add—and this remark is of supreme importance from the point of view of principle—that no process of change, however fundamental in character, could have justified the violation of Belgian neutrality in the circumstances with which it was carried out at the beginning of this war. Even if we must admit that the reservation *rebus sic stantibus*, in spite of the numerous abuses to which its application has given rise, may in certain cases justify the dissolution of treaties which were concluded for an indeterminate period, on the other hand it is unanimously agreed that it never gives a state the right to liberate itself by independent action and without further steps from the obligations of a treaty; it only enables the state to insist on a revision of the treaty or on its abrogation.

This principle, on the subject of which solemn affirmations have been made,[1] is imposed in an exceptional way on the consideration of the contracting states, with reference to treaties of a law-making or regulating character, which, founded as they are on the common interests of several Powers, aim at the establishment of a permanent juridical *régime* among the nations. This has been pointed out extremely well by Westlake with reference to these very treaties of neutralisation in regard to Belgium. "There are no treaties which combine in a higher degree the common interests of all parties and the common hope of benefiting every one. Con-

[1] When Russia wished, in 1870, to destroy the clauses of the Treaty of March 30, 1856, which related to the neutralisation of the Black Sea, alleging that she considered herself freed from them as new circumstances had arisen, the Conference at London, while agreeing to the revision of the Treaty, placed in the forefront of its heads of resolutions the following declaration: "C'est un principe essentiel du droit des gens qu'aucune puissance ne puisse se libérer des engagements d'un traité, ni en modifier les stipulations qu'à la suite de l'assentiment des parties contractantes, au moyen d'une entente amicale." Protocol of January 17, 1871 (Annexe); de Martens, *Nouveau Recueil général*, Vol. XVIII, p. 278.

sequently there are no treaties in which it is less allowable for one of the parties to claim for itself, to the exclusion of others, the advantage of a change of circumstances which, it may allege, has destroyed the reason for the treaty." [1]

It may not be uninteresting to recall the fact that this point of view was energetically defended during the Franco-German War by Count de Beust, speaking for the Austrian Cabinet, while Bismarck was threatening not to respect the neutrality of Luxembourg.[2]

SECTION II. *Did Belgium violate the obligations of permanent neutrality?*

Here we touch upon a question which for more than a year has been the subject of the most animated controversy. It is well known that the discovery of certain documents in the State archives at Brussels

[1] "Notes sur la Neutralité permanente," *Revue de Droit International et de Législation comparée*, 1901, p. 894.

[2] P. Eyschen, *Das Staatsrecht des Grossherzogsthums Luxemburg*. Marquardsen's *Handb. des öffentlichen Rechts*, Vol. IV. p. 39–40.

immediately preceded an attack against the honour of Belgium; one systematically worked up by German propagandists in neutral countries. These accusations only took shape, as is well known, when the invasion of Belgian territory was an accomplished fact. If in the face of such persistent attempts at argument it may be useful to draw attention once again to their lack of force, yet we cannot forget that the species of argument founded on them occupy of necessity a relatively small place in the system of defence used by Germany. These accusations, invented after the event to lessen in neutral opinion the deplorable effect of an impudent avowal, did not in any degree influence the decision taken in regard to Belgium—the witness of German statesmen is decisive on this point[1]—they have no

[1] The Chancellor in the Reichstag (August 4, 1914): "This act is contrary to the dictates of international law. We were compelled to override the just protest of the Luxembourg and Belgian Governments." Declaration of Herr von Jagow to Baron Beyens (August 4): "Germany has no reproach to address to Belgium: the attitude of the latter has always been correct" (*Second Belgian Grey Book*, No. 51).

connection whatever with the act they were intended to justify. For this act, at the moment when it was committed, only one excuse was given, that of necessity. Once this proposition was adhered to, however bad in itself, it should at least have been understood that the contention would exclude all new attempts at an explanation. The Imperial Government believed it could keep to such a contention in the case of the neutrality of Luxembourg. We must admit that its cause would have been less seriously compromised if the same discretion had been observed with regard to Belgium.

Let us briefly recall the facts. On October 13, 1914, the *Norddeutsche Allgemeine Zeitung* published the substance of a document addressed in 1906 by Lt.-General Ducarne, at that time head of the Belgian General Staff, to the Minister of War. According to the German official organ, that document clearly demonstrated the existence of a plan, complete in all its details, of military co-operation between a British expeditionary force and the Belgian army, in case

of a war against Germany. On the 25th November following, the *Norddeutsche Allgemeine Zeitung* returned to the attack, and published a *résumé* of a conversation between General Jungbluth and the British military attaché, Lt.-Colonel Bridges, said to have taken place on April 23, 1912. This new publication tended to prove that England would land troops in Belgium "as soon as France would be in a state of war with Germany."

It is chiefly on these two documents that the German Government has relied for its new plan of defence. This was outlined in the speech delivered at the Reichstag on December 2, 1914, by the Chancellor of the Empire, Herr von Bethmann-Hollweg, who on August 4 had proclaimed "the injustice committed by the violation of Belgian neutrality," and who now announced that at the time of the declaration of war, "even then the guilt of the Belgian Government was apparent from many a sign"; only "the absence of positive documentary proofs," and the fact that "he took Germany's responsibilities towards a neutral state so

seriously," [1] prevented him then from formulating the indictment which was so clearly implied in the documents published through his care.

It transpired that this tardy explanation was in fact a supremely awkward move. Who would ever be induced to believe that, being in possession of numerous proofs of the culpability of Belgium, the Chancellor would have been content to proclaim her rights? that "fully conscious of the great responsibility of the Empire," he would have thrown over the chance of at any rate a partial and provisional justification which these serious presumptions of guilt would have allowed him to put forward, and that he would have preferred to subject his country to the useless stigma of such a striking confession? This flagrant contradiction, against which the Chancellor has struggled in vain, has marked out for us the tortuous nature of his policy. It awoke mistrust and repulsion among the very

[1] Interview of the Chancellor with a correspondent of the *Associated Press*, January 24, 1915. *Times* of January 26.

people who in face of the cynical claims of the first days of war had shown themselves tolerant or resigned.

In order to explain the contradictions of his position the Chancellor alleged, it is true, that if he had made no use at the beginning of hostilities of the proofs of the guilt of Belgium which he possessed, it was because at that time the German military authorities wished to leave the door open for negotiations which would have allowed the Belgian Government to "retire together with the Belgian army to Antwerp under protest." "In the night from the 3rd to the 4th of August," concluded Herr von Bethmann-Hollweg, "when our troops entered Belgian territory, they were not on neutral soil but on the soil of a state that had long abandoned its neutrality." This explanation appeared to many German writers to be absolutely conclusive.[1]

As a matter of fact the Chancellor only succeeded in contradicting himself once more. It was not only in August, at a time when the Imperial Government was possibly still

[1] W. Schoenborn, *loc. cit.*, pp. 567–568.

under an illusion, however slight, as to the attitude of Belgium, that the Chancellor appealed to military necessity as the sole excuse for the violation of Belgian neutrality. He still adhered to this version of events, expressing the regret of the Imperial Government, and without uttering the slightest complaint against Belgium, even when many weeks of terrible fighting should have plainly instructed him on the subject of the indomitable resistance of the Belgian army. We have found an undeniable proof of this in his communication addressed on September 14 to the Ritzau bureau, in Copenhagen, published in the *Berliner Tageblatt* of the same day.[1]

The contradiction implied in the change of attitude of the German Government betrays itself even in a change that was made in the text of the ultimatum to Belgium in the official publication *Aktenstücke zum Kriegsausbruch* (edited by the Department

[1] "It is true," he still repeated at that date, "that we have violated Belgian neutrality, because we were driven to it by hard necessity. But we fully guaranteed the integrity of Belgium, and also the payment of an indemnity if she would consent to recognise this necessity."

of Foreign Affairs, G. Stilke, 1915). The ultimatum of August 2 ended with these two sentences : " The German Government is justified in expecting that such an eventuality will not take place (that is, the eventuality of a rupture caused by the resistance of Belgium to the German armies), and that the Belgian Government will be able to take suitable measures for preventing it from taking place. In that case the friendly relations which unite the two states will become closer and more lasting." This passage, which clearly shows that the Imperial Government did not dream on August 2, 1914, of casting doubt upon the good faith of Belgium, was suppressed in the last edition of the *Aktenstücke* (No. 27, p. 38) as irreconcilable with the new argument used by the German Government.[1]

Besides, it is well known that a critical examination of the documents discovered at Brussels has revealed the hollowness of the German accusations.[2] It has been shown

[1] F. Passelecq, *Le Second Livre Blanc Allemand. Essai critique et notes sur l'altération officielle des documents belges* (Paris, Berger-Levrault, 1916), pp. 22–26.

[2] *Second Belgian Grey Book*, Nos. 98–103; J. Van den Heuvel, " La Violation de la Neutralité belge," *Le*

that the famous "Conventions," of which so much has been made, consisted only of an exchange of opinions of a purely technical kind between military personages who were without any power to bring their respective Governments into the matter. Such are of frequent occurrence between representatives of Powers studying theoretical problems of strategy, etc. In the two reported conversations the supposition of the previous violation of Belgian neutrality had been expressly noted by the interlocutors as the essential condition of any military co-operation. The report of General Ducarne—a report often designated by the press as the "Barnardiston document"—contains the formal reference to this.[1] The same conclusion is arrived

Correspondant, December 10, 1914; E. Waxweiler, *La Belgique neutre et loyale*. The proof of the absolutely conclusive character of M. Waxweiler's demonstration is to be found in the puerility of the reply which R. Grasshoff has attempted to make (*Belgiens Schuld*, pp. 10–14).

[1] It is known that by means of certain alterations the German Press helped to change the character and aim of this document. (1) The chief sentence placed there as an annotation, "The Entry of the English into Belgium would take place only after the violation of our neutrality by Germany," was detached from the

at if we read the letters of Baron Greindl, Belgian Minister at Berlin. German propagandists have tried in vain to use these letters as a weapon against the Belgian Government. However prejudiced he may have been against the steps taken by Colonel Barnardiston, Baron Greindl never saw in this conversation, of which he was immediately made aware, anything but simple *ouvertures* (Letters of April 18, 1907, and December 23, 1911) or *propositions* (*Belgische Aktenstücke*, herausg. vom Auswärtigen Amte, Berlin, 1915, Nos. 29 and 85; *Norddeutsche Allgemeine Zeitung*, October 13, 1914), which had had no consequences. As to the con-

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context of which it forms an integral part and shown as a marginal note (*Randvermerk*) in such a way as to give the impression that it had been added later by some one who was not concerned in the *pourparlers* and thus without any right to modify its tenour. (2) The word "conversation" by which General Ducarne described the exact nature of this exchange of opinions, was translated into German by the word *Abkommen*, or convention. There is no question here of a mere inadvertence. As a matter of fact the date "fin septembre, 1906," written beneath the note which follows the report, was changed into *fini* (decided), in German *abgeschlossen*, in English *concluded*. See, *e. g.*, Dernburg, *The Case of Belgium*, p. 10.

versation of 1912, it is incorrect to assume, as, following the *Norddeutsche Allgemeine Zeitung*, most German writers have done, that Lt.-Colonel Bridges had expressed an opinion that English contingents would land in Belgium as soon as war had *broken out either between Germany and France, or between England and Germany*. The English auxiliary attaché had confined himself to saying that the landing might be rendered necessary by reason of the Belgian army finding it impossible to stop the Germans in their march across Belgium. Here again an intervention which depended upon the previous violation of Belgian territory was only considered as a method of carrying out the guarantee which England had to perform.[1]

[1] The official communiqué of the British Government under date of December 7, 1914, in repeating a conversation which took place on April 7, 1913, between Sir Edward Grey and Count de Lalaing, Belgian Minister in London, marks out in the clearest possible way the reasons for the attention paid to this subject by England, and exhibits the complete loyalty of both Governments (*Second Belgian Grey Book*, No. 100). The German propaganda (see *Die Belgische Neutralität*, Berlin, G. Stilke, p. 8; W. Schoenborn, *op. cit.*, p. 587) also tried to exploit against England a passage of

§ 1. *The contradictions involved in the German argument*

It is impossible to say what is the most astonishing thing in Germany's efforts to justify herself—the bad faith which reveals the attitude of her statesmen, or the extraordinary awkwardness which never failed to mark her propaganda. The accusations which she heaped on Belgium show the most strange confusion of mind; they carry their own refutation with them, for they cancel one another out.

The publication of the Bridges-Jungbluth conversation by the *Norddeutsche Allgemeine*

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an article by Lord Roberts published in the *British Review* (August 1913). The passage as reported has again been isolated from its context; the chief sentence which refers to the supposition of a purely defensive war, "The Fleet was in momentary expectation of alien attack," was omitted on purpose. As to the phrase: "Our Expeditionary Force was held in equal readiness instantly to embark for Flanders," every one knows that in England the term Flanders is used for the North of France, particularly the district of the straits of Calais. There is not one word in this article which could warrant the assumption that England intended to violate Belgian neutrality.

Zeitung has already strikingly refuted the thesis for which the German Government had tried to gain credit on the strength of the Barnardiston Document previously published by the officious organ of the Government. If we were to accept the argument, this Barnardiston document established the existence of a secret military convention, decided upon in 1906, between England and Belgium. The step taken by Lt.-Colonel Bridges in the year 1912 is a definite proof of the entire absence of any similar convention. For not only did the conversation have no reference to former arrangements—a fact which would be inexplicable if the preceding *pourparlers* had had any consequences—but we can see that the interlocutors discussed as an open question the essential conditions of English intervention in Belgium.[1]

The general intention of these first publications was to exhibit the Belgian Government as completely subjected to the political views of the Entente. On this occasion the German Press made a point of opposing the

[1] *Second Belgian Grey Book*, No. 99.

dark intrigues of Belgian diplomacy to the public opinion of the country, which was being led astray by its Government. More recently the Imperial department of Foreign Affairs has brought to light and published under the title of *Belgische Aktenstücke* [1] certain reports addressed to their Government by the Belgian Ministers at Berlin, Paris and London in the course of the years 1905–1914. The notice placed at the beginning of the collection attracts attention to certain estimates of the policy of the Entente (generally scarcely favourable) made by the writers of these reports. These estimates, which were, moreover, carefully selected and detached from the mass of correspondence, which alone would enable any one to judge of their real character, invariably seem to be dictated by the perpetual condition of anxiety—natural, indeed, in the representatives of a small state so greatly exposed by its geographical position—caused to Belgian diplomatists by the smallest incidents which might have helped to endanger pacific relations among neighbouring

[1] Berlin (E. Siegfried Mittler), 1915.

states. It is from this point of view of exclusively national interest that we must judge the last "revelations" of the German Government.

But also, we are lost in amazement at the flagrant contradiction which these documents show with the conclusions drawn from the first documents known as the "Anglo-Belgian Conventions." For did not the Imperial Chancellor take pains to tell us that Belgium had allied herself with the enemies of Germany? Why, then, do we hear to-day of the peculiar position of this country, which would never have been anything but "a simple spectator" of European politics (*der an der grossen Politik sozusagen nur als Zuschauer beteiligt war*), a fact which would give to the evidence of its representatives a convincing power that was quite exceptional? Have we not heard it said, and constantly repeated, even with pitying accents, that the Belgian nation owed its ruin to the equivocal manœuvres of its diplomacy? And now behold! there is an appeal to the judgment of these same diplomats who are now presented to our

view as "calm and reserved" men (*kühl beobachtenden*), and regret is expressed that their impartial and "objective" views have not reached the mind of the Belgian people, "completely subjugated as that nation is to French influence"!

Really the task of the officious defenders of Germany is an ungrateful one! However earnest is the effort they make, their laborious special pleading adjusts itself with difficulty to the tergiversations of their Government.

§ 2. *The secret and one-sided character of the Pourparlers*

The *Norddeutsche Allgemeine Zeitung* at the moment when it published the documents having reference to the conversations between certain Belgian military personages and the English attachés (Nos. of October 13 and November 25, 1914), formulated a curious complaint against the Belgian Government. Belgium, it was asserted, had failed in her duty of impartiality imposed on her by her neutrality, in keeping secret the terms of these conversations, in omitting

to communicate them to Germany, and, above all, in neglecting to ensure for herself the support of Germany and her military authorities in case of an Anglo-French invasion, as she had ensured for herself the support of England against a German invasion. The one-sidedness of these precautions would thus, it was alleged, constitute a definite proof of the desire of the Belgian Government to make common cause with the enemies of Germany.[1]

Belgium, as we have seen, not only possessed the right, but also was under the obligation, to put herself in the position of repulsing, even by armed force, any attack on her neutrality. To her military authorities belonged the special responsibility of taking the necessary precautions in time of peace which would provide effectually against the eventuality of war. Since the legality in principle of taking these necessary precautions was beyond question, no one would

[1] See also Kohler, "Neue völkerrechtliche Fragen," *loc. cit.*, col. 88–84; R. Grasshoff, *Belgiens Schuld*, p. 11; von Campe, *Deutsche Juristen-Zeitung*, March 1915; W. Schoenborn, *loc. cit.*, p. 589; Frank, p. 29; A. Fuehr, *The Neutrality of Belgium*, pp. 174–175.

be surprised if in the choice of its precautionary measures the Belgian Staff were obliged to take into consideration the possibility of a German offensive across Belgian territory, the threat of which became more insistent day by day and was, moreover, a matter of public discussion. Certainly it is strange to see Germany contesting nowadays the necessity for these plain precautions which were definitely justified by her own aggression. Germany passes all bounds when she reproaches Belgium for not having sought aid and protection from the very nation that was preparing to violate her rights.

But still Germany clings to her point. She suggests that the secret character of the *pourparlers* unduly favoured the interests of England to the detriment of those of Germany, her future antagonist. Belgium, which owes its very existence and its neutrality to the conception of a balance of power in Europe, is conceived to have disturbed the balance of power in the interest of one of the Powers.[1] This remark has no

[1] Frank, pp. 29–30.

force. If Belgian neutrality is looked upon by the guaranteeing Powers as an essential element in the balance of power in Europe, no objection can logically be taken (from the point of view of the balance of power) to the steps taken with precisely this object: viz. to safeguard neutrality. As to the secret character which such conversations necessarily have, there is no need to justify it. Belgium, indeed, as we cannot too often repeat, could not, without endangering the general peace, give expression to the fears which the military preparations of a neighbouring Power might have induced in her. Belgium, profoundly conscious of the duties imposed on her by her essentially pacific position as a neutral state, owed it to Europe and to herself to avoid with extreme care any step which might have helped to precipitate the conflict which she dreaded might break out. Secrecy would have been ordained in a matter relating to a defensive alliance which had received the approval of the two Governments, just as well as in the actual case of a simple exchange of opinions of a purely technical

character between persons who had no authority to bind their respective Governments. We need no other proof than that given by an historical precedent to which several German writers have appealed in an ill-advised way. We remember that in 1831 the fear, which at that time was still very deep-rooted, of a French invasion, had decided the Northern Powers (Austria, Great Britain, Prussia and Russia) to impose on King Leopold I a Convention which should organise on the basis of a common and concerted action, a plan for the protection of the fortresses set up in the southern part of the country. The hypothesis of a previous violation of Belgian neutrality (to which this Convention was subject) justified, as we have seen, its one-sided character. The terms of the Convention remained secret until 1868, a date at which the complete disappearance of the fortresses and also the modifications which had occurred in the respective relations of the contracting Powers, had made obsolete the system of defensive organisation to which the Convention was bound.

§ 8. *The question of the right of a neutralised state to enter into alliances*

As they decided to look upon these *pourparlers* of a purely hypothetical nature (reported in the documents found at Brussels) as if they were settled conventions, many German jurists occupied themselves in discussing the question of the right of a neutralised state to enter into treaties of alliance. We might have simply left this discussion aside as not pertinent to the question, if it were not for the signs seen in it of the desire to discover in the opinions of certain Belgian writers a confirmation of the argument advanced by the German Government.

Let us briefly recall the principles of the question. Every alliance refers to the hypothesis of an armed conflict. It follows logically, then, that the right of alliance of a permanently neutral state is very closely connected with its right of making war. If it is found desirable to forbid all alliances which might tend to implicate the state in a conflict which affects other Powers, on

the other hand it must be unhesitatingly admitted that the state has the right to promote any friendly understanding which would have for its sole object the defence of the country and the maintenance of its neutrality. The neutralised state has, therefore, an incontestable right to enter into a defensive alliance of a one-sided character, for such a treaty, without obliging it to go to the help of its ally, assures it of the protection of the latter in case of a violation of its neutrality.[1] Even though concluded by the neutralised state with a Power which guarantees its neutrality, such a treaty would have a *raison d'être*, as its object would be to regulate in a precise and detailed manner the conditions carrying out the promised guarantee. Hence it is useless for Professor Kohler to have tried to confuse the issue by asserting that the defensive alliance always contains in germ an offensive alliance, the distinction between a defensive and offensive war being one that is practically

[1] Many German publicists admit this principle. See, *e. g.*, von Campe, *Deutsche Juristen-Zeitung*, March 1, 1915, col. 280. This view is also taken by Swiss writers: Schweizer, *op. cit.*, pp. 97–98.

impossible to make.[1] In the present case the distinction is a perfectly simple one. The co-operation of the Belgian army as foreseen by a treaty of defensive alliance would have followed upon an actual event, *the same which marks the realisation of the guarantee expressly ordained by the constructive treaties of neutralisation:* viz. the violation of Belgian territory by a foreign army.

In a study of Belgian neutrality, which, moreover, is agreeably distinguished from the greater part of German publications by the seriousness of its views and the moderation of its language, Professor Frank, of the University of Munich, has undertaken to prove that a complete and very significant development has declared itself in Belgian public opinion in regard to this very question of the right to enter into alliances.[2] During an early period the country, sincerely attached to the international status bestowed upon it by the Powers, had frankly

[1] "Neue völkerrechtliche Fragen," *Deutsche Juristen-Zeitung*, January 1915, col. 88.

[2] *Die Belgische Neutralität*, pp. 15–26.

accepted the corresponding burdens. The conclusion of a treaty of alliance, even of a defensive character, appeared to the writers of that epoch as irreconcileable with the duties of a permanently neutralised state. But for about the last twenty years, a radical change is said to have manifested itself, and thereby a peculiar light has been thrown upon the new direction of Belgian political aims. Wearied of a state of things of which she only saw the disadvantages, Belgium now presumably only dreamed of shaking off the yoke. Her contemporary jurists, by claiming under cover of a biassed interpretation her right of entering into alliances, are said to have justified in anticipation the political action of the Government.

There is no doubt that Professor Frank has here fallen into a very common error, which induces men to refer to the past the ideas and prepossessions of the present. His thesis is confirmed neither by the opinions of Belgian politicians nor by the publications of Belgian writers. To take one case only: let us compare the views supported in 1843 at the House of Repre-

sentatives (Séance of May 30, 1848) by Lebeau, formerly Minister of Foreign Affairs, in relation to a plan for a military alliance with Holland of a defensive character, with the opinion expressed on the same subject by M. Beernaert, in 1901, before the Commission charged with the duty of studying those questions which referred to the military situation.[1] The comparison brings out an absolute harmony of view. The two statesmen expressly confined Belgium's right to make alliances to *ententes* of a purely defensive character, the object of which is limited to the protection of her independence and neutrality. We must even admit that if slight differences of wording betray some shade of difference in opinion, it is in the most recent of the two declarations that we shall find the less comprehensive formula, one slightly less favourable to the right of entering into alliances.

The same preconceived notions led Frank to misunderstand completely the true meaning of the opinions of certain writers to which

[1] Quoted by Descamps, *op. cit.*, pp. 373–374.

he attaches so great an importance. From 1845 onwards, in his *Essai sur la Neutralité de la Belgique*—the first important publication devoted by a Belgian writer to the study of this question—G. A. Arendt formally declared "that there are alliances which a neutral state may form without failing in any of its obligations: such are the alliances which have for their end its own defence and the maintenance of its neutrality." Alphonse Rivier, who is also placed by Frank among the representatives of the most rigorous school of thought on this subject, claimed in his turn for the neutralised state the right to conclude defensive alliances of a one-sided character: "The neutralised state should conclude defensive alliances, not certainly such that would oblige it to defend its ally, but alliances in which the ally would be bound to defend the neutral state." [1] In his *Notes sur la Neutralité* [2] Ernest Nys explicitly adopts the distinction made by Arendt and by Rivier; and

[1] *Principes du Droit des Gens*, 1896, Vol. II. p. 60.

[2] *Revue de Droit International et de Législation comparée*, 1901, p. 27.

Descamps, in his standard work published in 1902, places the right of entering into alliances on the part of the neutralised state within the same limitations.[1]

If, then, we do not discover in Belgian juridical literature any trace of the evolution which Professor Frank set out to find there, it is, on the other hand, perfectly true that many recent authors are engaged in reacting against the tendency (which was apparent in certain quarters) to impose on permanent neutrality an unjustifiable superfluity of obligations and responsibilities. This tendency, represented in Switzerland by Hilty,[2] and in France by Piccioni,[3] was derived from a theoretic and abstract conception of permanent neutrality. An *a priori* method of interpretation and a habit of extreme systematisation led these writers to transform into obligations of a legally binding character a whole series of maxims of a purely political

[1] *Op. cit.*, pp. 366 *et seq.* A. Schulte himself recognised this complete unanimity of view in the Belgian writers, *op. cit.*, p. 97.

[2] *Die Neutralität der Schweiz in ihrer heutigen Auffassung*, Berne, 1889.

[3] *Essai sur la Neutralité perpétuelle*, Paris, 1891.

type, the observance of which is to the neutralised state merely a question of convenience, prudence, or opportunity. This kind of view, as was natural, found its most advanced expression in the writings of certain jurists, such as Richard Kleen,[1] who have been urged on by their declared hostility to the very institution of permanent neutrality to exaggerate its inconveniences and its burdens to the point of calling in question the sovereignty of the neutralised state. The masterly work of Paul Schweizer, professor at Zurich, was the sign of a general reaction against these erroneous theories, and it would be a strange misconception to connect the part taken in this movement by Belgian writers with the alleged new political aims of their Government. Moreover, in many respects, especially in the question of the right to enter into alliances, the views expressed by them are much less advanced than those supported by the eminent Swiss

[1] *Lois et Usages de la Neutralité*, Paris, 1898. The same remark applies to the publications of Lt.-General Brialmont, of which many German writers have tried to take advantage. See Schulte, p. 103; Frank, p. 25.

professor;[1] they are exactly analogous to those which are put forward by many foreign writers among whom may be mentioned Geffken,[2] and the well-known Norwegian jurist, Fr. Hagerup.[3]

In conclusion, it may be affirmed that an attentive and impartial examination of the views cited by Frank in no way supports his contention.

[1] Frank attaches a peculiar importance to Descamps' remark that the duty of the neutral state to abstain from certain alliances is a duty of the state to itself rather than to other states. This remark, expressed in identical terms, is to be found in P. Schweizer, p. 99.

[2] Holtzendorff's *Handbuch des Völkerrechts*, Vol. IV. p. 685.

[3] *La Neutralité permanente*, Revue générale de droit international public, 1905.

CHAPTER IV

THE INTERNATIONAL SIGNIFICANCE OF THE VIOLATION OF BELGIAN NEUTRALITY

THE arguments which we have dealt with up to the present claimed to justify the violation of Belgian neutrality. But some publicists, possibly conscious of the weakness of the arguments advanced, have undertaken to lessen the responsibility of the German Government in the eyes of neutrals by attempting—as a side issue—to describe this violation as a question which, entirely apart from them, could arouse neither protests nor reservations.

Such a proposition contests the international value of Belgian neutrality. It was an invention of some German jurists and has been accepted here and there by the press of neutral countries, especially by that of the United States. Under the appearance of juridical argument it conceals a sophistry which it is well to unveil, for it tends to

little less than to render illusory those provisions of international law which have been among those most firmly established.

The neutrality of Belgium, as we have seen, can be considered from two points of view. It owes its origin to an agreement to neutralise certain special features which are superimposed on the general character of ordinary neutrality, and which distinguish it from the latter. Considered without reference to and independently of the treaties of neutralisation, this neutrality depends upon the common law of neutrality as defined by the provisions of the Fifth Hague Convention of 1907.

When Belgian territory had been invaded by the German armies, would not a protest on the part of the Powers not engaged in the actual conflict have been a legal proceeding? No, is the answer of certain writers, who say that this protest could not have been justified, on whatever basis the claim of Belgian neutrality was said to rest. As a neutralised country, Belgium could not, it was said, appeal against the violation of treaties of neutralisation to the protection

of Powers which had stood aside from those treaties. As a neutral country again, it is asserted, she lost all right to the support of her co-signatories of the Hague Conventions from the day when by her refusal to accede to the ultimatum of Germany, she gave up, together with her character as a neutral nation, all the rights of neutrality.[1]

Let us examine in turn these two assertions.

1. Every one admits that neutralisation in a very special manner affects the right to make war. Not only does it prevent the neutralised country from finding itself concerned against its will and indirectly in a conflict which has arisen among other powers, it aims beyond this at sheltering a country from all direct aggression inspired by a personal quarrel.[2] It follows from this, as

[1] W. Schoenborn, *Deutschland u. der Weltkrieg*, pp. 570–572; G. Harvey, "The Government and the War, a Reply to Mr. Roosevelt," *North American Review*, May 1915; Peters, "Unsere Feinde u. das Völkerrecht." *Preussische Jahrbücher*, January 1915, p. 188; J. W. Burgess, *New York Times*, October 28, 1914; cf. *American Journal of International Law*, 1915, pp. 960, 961.

[2] T. E. Holland, *Studies in International Law* (1898), p. 271.

some German writers seem to recognise (Schoenborn, *op. cit.*, p. 571), that there can be no regular state of war between a state which has been a party to the treaty of neutralisation and the neutralised state, so long as the latter acts in accordance with its obligations. If it is true that the Powers which were not signatories to the treaties of 1839 have no direct personal claim, we cannot deduce from this that a war declared in spite of these treaties should be necessarily a regular one in their view. The contention put forward by Harvey confuses neutralisation, which binds all the nations, with the guarantee, the action of which is limited to the contracting parties.

Neutralisation, together with the limitation of the right to make war which results from it, necessarily affects the legal position of all the other members of the community of nations. When these, by a prolonged and tacit assent, have implicitly confirmed the treaty of neutralisation, the *régime* which is a result of the treaty undeniably has an effect beyond the sphere of the contracting parties. As von Liszt says very clearly,

"Permanent neutrality does not only bind the states which have set it up: it constrains all the other states in proportion in which they have assented to it, either expressly or tacitly."[1] Besides, the text of the treaties of 1839 is decisive. "Belgium," according to Article 7, "shall be bound to observe such neutrality *towards all other States*" (see Hagerup, *op. cit.*, p. 590).

The permanent neutrality of Belgium, then, is not, as is sometimes claimed, a condition the effects of which are limited to the mutual relations of the contracting parties. The truth of this is so evident as to force every one to admit that an attack directed against Belgium by any state not represented in the treaties of neutralisation furnishes a *casus belli* to each one of the Powers signatories of these treaties. The

[1] *Das Völkerrecht* (1915), p. 68; cf. Fr. Hagerup: "Que le traité de neutralisation contienne ou non une disposition formelle à cet égard, la neutralité permanente doit être obligatoire envers tous les Etats appartenant à la communauté du droit des gens," *La Neutralité permanente*, Revue générale de droit international public, 1905, p. 590; Lawrence, *Principles of International Law*, p. 597; O. Nelte, "Die belgische Frage," *Zeitschrift für Völkerrecht*, Vol. VIII. (1914), pp. 745–746.

principle of equality and of reciprocity urges us to look upon the right of Germany to declare war on Belgium from this point of view. Of such a right Germany has despoiled herself, by renouncing in the presence of all the other nations her power to force on Belgium, so long as she remained faithful to her duty as a neutral state, a regular state of war. And thus the nature of the neutrality of Belgium marks out the international significance of the aggression to which that neutrality has been subjected. Here, again, we may cite von Liszt: "The violation of permanent neutrality by belligerents then appears as an infraction of the law of nations (*als völkerrechtliches Delikt*), and it makes legal the intervention of the other Powers against the state which has disturbed the reign of peace." [1] Thus even on the basis of the treaties of 1839 the invasion of Belgium could not be justified in the eyes of neutrals by the existence of a regular state of war.

2. While the object of neutralisation is to protect a state against any kind of aggression, direct or indirect, the common law of neutrality, established by international

[1] *Das Völkerrecht*, p. 68.

custom and codified by the Fifth Hague Convention, aims solely at protecting the neutral state from the consequences of a conflict produced by a clashing of interests which does not personally affect the neutral state, but which places some other Powers at variance with one another. This is the object of Articles 1 and 2 of the above Convention, which affirm the principle of the inviolability of neutral territory. No one can deny that on August 2, 1914, Belgium was in the very position to which these two texts refer. Belgium opposed to the ultimatum of the German Government the law of her neutrality; she appealed to her rights; she remembered her duties; it is solely because she refused to deviate from her impartiality towards a belligerent that she has suffered armed violence. On what ground, then, can she be denied in certain quarters the right to appeal to her co-signatories of the Hague Conventions?

This is the excuse, formulated in almost identical terms by Professor Schoenborn and by George Harvey, director of the *North American Review*.[1] The "confidential

[1] See also the interview with George Harvey in the London *Standard*, December 2, 1915.

note" sent on August 2, 1914, by Germany was practically equivalent, it was said, to a declaration of war against Belgium in case the Belgian army attempted to oppose the passage of German troops. It thus constituted an ultimatum which Belgium could not repel without consciously risking the danger of an armed conflict with the German Empire. Belgium, when she refused to submit to this demand, decided her own fate; she lost, it is said, her neutral character and by operation of the ultimatum became a belligerent; from that moment she could no longer appeal, on the ground of the provisions of the Fifth Hague Convention, to the intervention—even in the form of a mere diplomatic protest—of neutral states parties to that convention.

The mere statement of such an argument offends all natural feeling of justice and equity. Nor will it be difficult to expose its inaccuracy. Against it we may cite the common law of contracts and the formal text of the Fifth Hague Convention. It is a fundamental principle of the common law of contracts that the failure to execute a

contract never can as a result release the party in fault from the obligations which the contract imposes upon it. The only party which can claim exemption from this failure to execute a contract is the party which has remained faithful to its engagement. *Nemo auditur suam turpitudinem allegans.* No one in law can allege his own fault as an excuse to serve as a weapon against another. The argument which we oppose is directed against this incontestable truth; it attributes to the German ultimatum—in itself a flagrant violation of the Fifth Hague Convention—the peculiar privilege of withdrawing from Belgium her right to the protection of her neutrality. Thus, only one precaution need be taken, one formality fulfilled—*i. e.* a declaration of war, and by a sudden turn of the wheel Belgium becomes a belligerent, Germany innocent, neutrals all satisfied! And, in fact, such sophistry brings to light all the irony of the Mephistophelian advice—

"Mind, above all, you stick to words,
. . . . . .
For when ideas begin to fail,
A word will aptly serve your turn,

With words your battles can be fought,
And systems founded upon words. . . ." [1]

The declaration of war implied in the German ultimatum was inoperative in law, and is without any juridical significance. The consequent aggression placed Belgium in a position of self-defence. Although constrained to give up the attitude, which should have been hers, of taking no part in the conflict, Belgium has none the less kept intact in law all her rights and privileges in regard to her neutrality. None of her claims to have her neutrality respected have been withdrawn from her.

We may add that the argument is in contradiction to a definite text; the text of Article 10 of the Fifth Hague Convention, the adoption of which by the Conference was due to the initiative of the Dutch delegates. "The fact of a neutral Power repel-

[1] "Im ganzen—haltet Euch an worte!

. . . . . .

Denn eben wo Begriffe fehlen,
Da stellt ein Wort zur rechten Zeit sich ein.
Mit Worten lässt sich trefflich streiten,
Mit Worten ein System bereiten. . . ."

GOETHE, *Faust*, Erster Teil.

ling, even by force, attacks on its neutrality, cannot be considered as a hostile act." The Dutch delegate, den Beer Portugael, argued for his proposal in the following words: "A neutral state finds itself in a sufficiently difficult position when it has to have recourse to arms to cause its rights to be respected and above all to fulfil its duties, without the accomplishment of these acts being presumed to be an act of hostility." The Commission, supporting this opinion against the opinion of some members who considered the proposal to be *superfluous because self-evident*, expressed itself in the following terms: "It is worth while to say expressly that the use of force by the neutral state with the sole object of repelling the attack on its neutrality cannot be considered as a *casus belli* by the state which has obliged it to have recourse to this extreme measure" (*Deuxième Conférence, Actes et Documents*, Vol. I. p. 146, and Vol. III. p. 189).[1]

[1] This point of view was adopted by the Belgian Government: *cf.* letter of M. Davignon to the diplomatic representatives, August 5, 1914 (*First Belgian Grey Book*, No. 44).

The violation of her neutrality can certainly be considered a *casus belli* by the neutral state, which has the absolute right to draw the consequences which it considers to be advisable, but no resistance even by armed force to this violation authorises the aggressor to legalise his act by an appeal to the existence of a regular state of war.

What considerations can really be quoted adversely to these decisive arguments? "It cannot depend on the will of one state," says Schoenborn,[1] "to remain neutral in case of war, nor to withdraw from the juridical consequences of a state of war. . . . Thus the Boer republics, however desirous they might be of avoiding war against England, were nevertheless obliged to submit to it in 1899." [2] Here we can penetrate to the very source of the confusion which vitiates the whole of the argument. The war in which England and the South African Republics were at variance was the result of a direct disagreement: the two adver-

[1] *Op. cit.*, p. 570.

[2] Schoenborn, however, agrees that the argument cannot apply to Belgium, as a neutralised state.

saries fought it out on strictly personal grounds. Certainly in this sense we may say with George Harvey that "a belligerent, under the present international system, is at liberty to seek his own *casus belli*, and to maintain it before the world." There is no analogy at all between this case and that of a country not involved in a conflict between other powers, except on account of a violation of the law of neutrality.

Moreover, who does not realise the necessary consequences of the theory against which we are striving? How could the Powers which signed the Hague Convention possibly consider Belgium to have lost all the rights inherent in her neutrality because she refused to submit to an ultimatum which ordered her to violate all her duties, when they had themselves imposed on neutral states the grave and strict obligations now embodied in Article 5[1] of the same

[1] Art. 5: "A neutral Power ought not to allow on its territory any of the acts referred to in Articles 2 to 4." Art. 2: "Belligerents are forbidden to move across the territory of a Neutral Power troops or convoys either of munitions of war or of supplies."

Convention? This would be indeed a strange argument, which would lead to the conclusion that the protection assured to neutral states by international conventions would be withdrawn as soon as they undertook to fulfil—and that at the peril of their existence as nations—the obligations of their neutrality.

The solidarity of the Powers which were signatories to the Hague Conventions imposes on them the imperative obligation to see that the principles that they there formally sanctioned should be supported. It is a matter of common interest to them all. Should they conceal their desire to abstain from action under pretexts which, moreover, blind no one, they would contribute to the spread of a disbelief—already too general—in the efficacy of all international control.

CONCLUSION

GERMANY has been ill-served by those to whom she committed her cause. The propaganda of her jurists, neither discreet nor dexterous in treatment, has alienated from her the sympathy which the brutal policy of her Government had not altogether destroyed. This has been acknowledged by Walther Schücking, Professor of International Law at the University of Marburg: "The patriotic propaganda of our professors," he says, "has been so tactlessly carried on that their pamphlets and explanatory papers have produced, I fear, a contrary effect to that which was expected." [1]

This has been most emphatically the case with the attempts so constantly renewed at justifying the violation of Belgian neutrality. Such dubious casuistry produces an unconquerable feeling of mistrust. It

[1] *Die Deutschen Professoren und der Weltkrieg* (Flugschriften des Bundes "Neues Vaterland").

is in vain that they attempt to impose upon the public by describing the case of Belgium as "extraordinarily delicate and complicated" (V. Valentin). When submitted to the test of impartial criticism the arguments of the German jurists betray at every point perplexity and weakness. Objections from every quarter, complaints of all kinds, succeed and jostle one another and leave no impression but that of an incoherence of view and a waste of energy. This hesitation of mind appears as the undeniable sign of a complete loss of moral equilibrium.

Germany feels herself to be isolated from the rest of the world. Nothing has more certainly contributed to this result than the constant and insincere appeal to legal principles to justify the acts of an unscrupulous policy. Yet the greater number of German jurists persist none the less in wishing to base on relations of Force a new system of Law. They do not, however, delude themselves about the reception accorded to these views among nations which have remained firm in their adherence to an

international order founded on the equality in law of sovereign states. Has not Professor Niemeyer just proposed that "Die deutsche Vereinigung für internationales Recht," of which association he is president, should withdraw from the "International Law Association" because Germany, "having interests distinct from those of other countries, has tendencies in this province which are unlike those of other nations?"[1] These words contain the verdict of Germany's moral decay.

Yet some voices have made themselves heard in the wilderness, weak, indeed, and solitary voices: those of Lammasch, of Wehberg, of Schücking. They have dared to oppose to the current immoral political maxims an expression of honesty and of good faith. While being conscious of the terrible faults through which Imperial Germany has placed herself under the ban of the nations, these men appeal nevertheless

[1] *Le Temps*, January 14, 1916. See in this connection Kohler's extravagant article, "Das neue Völkerrecht," *Zeitschrift für Völkerrecht*, Vol. IX. (1915), pp. 5 *et seq.*

to the possibility of the future revival of pacific relations among civilised peoples.

Germany, however, has most seriously compromised these pacific relations by destroying among European states that sense of mutual security which constitutes the essential basis of international intercourse. "Even in the very midst of war," said Kant, "it is necessary that a certain confidence should be felt in the principles of an enemy's conduct." [1] This confidence will only be recovered when the German nation awakens to respect for Law and for the pledged word.

[1] *Zum ewigen Frieden*, Kant's Werke, edit. Hartenstein, Vol. VI. p. 412.

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